

ABSTRACT

Title of Document: READING BETWEEN THE LINES OF RIGHTS: A CRITICAL ANALYSIS OF INTERNATIONAL AND NATIONAL DISCOURSES (DE)MARGINALIZING INDIGENOUS AND MINORITY RIGHTS TO HIGHER EDUCATION

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In UNESCO's World Declaration on Higher Education for the Twenty-First Century: Vision & Action it is emphasized that access to higher education for disadvantaged groups "must be actively facilitated, since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations." Underrepresented groups across the globe, including minorities and indigenous peoples, traditionally endure the most unequal, inequitable, low quality educational opportunities. Discourses regarding this reality at the tertiary level is often overlooked and nearly non-existent, however. This dissertation, therefore, guided by an interdisciplinary theoretical framework relevant to higher education, international human rights law, and decolonial theory, highlights the cases of three specific minority and/or indigenous populations— Afro-Brazilians in Brazil, Bahá'ís in Iran, and Māori in New Zealand.

This study is guided by two questions: 1) How are indigenous peoples and minorities' rights to higher education accounted for in international instruments and national

laws and policies?; and 2) How do international and national-level discourses compare regarding equal and equitable access to quality higher education for these underrepresented groups? To answer these questions, a mutually-reinforcing critical discourse analysis and interpretive policy analysis approach was applied to study texts specific to minority groups and indigenous peoples' access to "equal" and "equitable" higher education that meets "quality" standards. The language and culture of legislative and policy measures at the national level (Brazil, Iran, and New Zealand) are compared to international human rights instruments ("binding" and "non-binding") adopted by entities within the United Nations System. State and international texts selected are specifically relevant to minority groups, indigenous peoples, and the right to education and higher education.

Interestingly, there are some parallels between national and international regulations and policies, and in other instances, there are clear-cut contradictions, and much has to do with evident weaknesses and/or strengths across comparisons. The sociocultural, historical, economic, and political contexts of the three countries are also reflected in the language and content of their legislative measures and policies as well as in the states' attitudes towards standards of education and underrepresented groups in international law.

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INTERNATIONAL AND NATIONAL DISCOURSES (DE)MARGINALIZING
INDIGENOUS AND MINORITY RIGHTS TO HIGHER EDUCATION

By

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Dissertation submitted to the Faculty of the Graduate School of the
University of Maryland, College Park, in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
2015

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Dedication

“Education does not transform the world. Education changes people. People change the world.”

Paulo Freire

To the memory of my cousin Fardad,
whose inquiring spirit and love for education reside within me . . .

To the memory of Professor Ruth Allen,
whose commitment to justice was evident within and beyond classroom “walls” . . .

To the loving friends collaborating with, teaching, and/or studying at the BIHE,
who courageously live their lives through their deeds . . .

To my moms and pops
for living the value of educating the girl-child in both words and deeds . . .

To all the noble souls denied justice and equity
and those who willing and able to educate and advocate on their behalf
and liberate oppressors from their ignorance.

Acknowledgements

*“At times our own light goes out
and is rekindled by a spark from another person.
Each of us has cause to think with deep gratitude
of those who have lighted the flame within us.”*

Albert Schweitzer

Believe it or not, I found this to be the most challenging section of the dissertation to write (even if it is *optional*). Seriously. Words cannot adequately convey the degree of gratitude and humility I attribute to everyone who has “traveled” with me to this final destination. There are countless souls I have encountered throughout the past and current stages of this doctoral journey who have generously contributed to the drafting and completion of this final dissertation in some shape or form—directly and indirectly, be it knowingly or unknowingly. Regretfully, however, I cannot name or list every single person, but they are acknowledged in mind and heart nonetheless. The global extent of support has also been overwhelmingly rewarding, and with the ever-advancing momentum of technological and scientific innovations, social media networks, electronic communications, Internet, telephone, and Web 2.0 applications, I have been fortunate to access various channels that promote communication and build relationships to effectively complete my research with souls all over the globe.

I am especially grateful to my advisor and committee chair, Professor Nelly Stromquist, who has been patiently awaiting the completion of this product (as much as I have) and supported me throughout the many unanticipated hurdles endured during the full course of my doctoral studies and dissertation research. Nelly pushed me to stretch my mind and challenge “comfortable” and familiar ways of knowing, and for that I am eternally

indebted. The additional members of my dissertation committee—Professors Robert Croninger, Victoria-María MacDonald, Hoda Mahmoudi, and Peter McLaren likewise added meaningful and valuable insights and expertise that complemented the focus of my research. I am beyond thankful to each and every one of them for investing so much of their already-limited time to my (beyond) extensive dissertation. Professors Steven Klees and Helene Cohen were also especially helpful during the preliminary phases of my dissertation proposal, and their commitment to my research was invaluable to the completion of the research. The amazing “behind-the-scenes” souls—Ms. Clarissa Coughlin, Ms. Valerie Foster, Ms. Stephanie Goodwin, and Mrs. Caroline Ordiales-Scott, who continuously assisted me and responded to my incessant inquiries regarding the administrative and programmatic requirements, “saved” me on so many occasions; I would not have been able to complete all my graduation requirements if it were not for their loving support (and friendly reminders).

Ms. Gay McDougall and the staff at Minority Rights Group International were vital resources, who offered ceaseless support in solidifying my experience and knowledge base in international human rights law, especially regarding underrepresented groups. Professor Brian Lepard (University of Nebraska) and Professor Wade Cole (University of Utah) were always available to consult and advise me on their vast, relevant areas of expertise, and my research was definitely richer thanks to their generosity and kindness. Professor Bushrui was the first faculty member I had encountered upon initially arriving at the University of Maryland, College Park, and his and Mrs. Bushrui’s selfless support and dedication to excellence and my academic career and personal health and well-being leaves me immensely humbled and grateful to have served and worked with them.

Considering the number of companions who have accompanied me on this journey is overwhelming and heartwarming. I am truly blessed to have the love and support of Dr. Ebrima N. Ceesay, who literally and figuratively had my back in more ways than one, and I can only hope and strive to reciprocate the level of selflessness and generosity that he continues to bestow upon me. Ms. Julia Laurico's selflessness, love, and comfort during high and low times alike reminds me how blessed I greatly am to have this dearest sister (from another mister) in my life. An oasis in the form of my dear sister Dr. Şadi Şahbazian reminded me to stay focused and clear of distraction, and her selfless service to my process and provision of unlimited access to her amenities were far above and beyond what I deserved. The loving guidance, insights, and support of Drs. Bahia and Glenford Mitchell, as well as the flexibility, comfort, and prayers of the Bahá'í community of Montgomery County Southeast bolstered my faith and commitment to completing this process. Likewise, I cannot thank enough those dear souls across the globe, who worked with me, held my hand (and heart), laughed and cried with me, embraced me, and encouraged me to achieve what is possible and believed even in the midst of my own doubts—Ms. Ruth Forman, Mrs. Ashley Monfared, Dr. Ashkan Monfared, Ms. Poupak Moallem, Mr. Moussa Tráore, Dr. Alankar Bandyopadhyay, Dr. Maritza Gonzalez, Dr. Brent Edwards, Dr. Dierdre Williams, Dr. Pragati Godbole Chaudhuri, Professor Shabnam Koirala-Azad, Dr. Erin Murphy-Graham, Dr. Heather Harding, Dr. Chelsea Jackson Roberts, Professor Michael Karlberg, Mr. Edmund Lee, Ms. Maura Elford, Dr. Mouna Mana, Professor Anna Jacobson, Mr. Nii-Odoi Glover, Ms. Dayana El Azhan, Ms. Saniah Fatemi, Ms. Naaz Khan, Ms. Acacia Reed, Ms. Gulnur Valiullina, Mrs. Erica Toussaint-Brock, Mrs. Niloufar Gibson, Ms. Sanaz Sadeghi, Ms. Gilda Charles, Ms. Makini Boothe, Ms. Talibah Sun, Mr. Derrick Figures, Mr. Lionel

Ventura, soon-to-be Drs. Negar Ashtari Abay, Justin DeLeon, and Melissa Gholamnejad, my beloved sisters in “flyte,” and so many other selfless brothers and sisters whom I have the pleasure of knowing and collaborating with.

The gratitude I have for my parents is immeasurable. In their selfless love for their unborn children, they escaped a physical “reality” that failed to recognize their human dignity and identities as equal citizens, thus imposing great injustices upon them and their community. In their decision to sacrifice the proximity of family and the comfort of the familiar to arrive in an unfamiliar land, they fostered and nurtured the opportunity and privilege for me to carve out the path that led me to write this here today. It is my hope (and plan) to utilize this degree to advance the aspirations and efforts of my mother and father for *everyone* who may benefit therefrom. The faith they instilled within me motivates me to progress beyond this final yet “partial fulfillment” of the doctoral degree in elevating my commitment and qualifications to living my life for the betterment of humankind. Also, I am sincerely indebted to my dearest brother, Dr. Samaan Sattarzadeh, whom I am fortunate to have grown with and learned from. He keeps me grounded with the reminder that even this process called for justice from beginning to end.

Consequently, to say this dissertation was completed on my own would be an utter denial and disregard for the community of supporters and the village that made it possible for me to successfully reach this final stage. This dissertation (and the full course of my doctoral studies) comprised collective and collaborative efforts, thoughts, and prayers. May the next and future steps I take (as an extension of this recent journey) genuinely reflect the magnitude of gratitude I have for all of you.

Table of Contents

Dedication.....	ii
Acknowledgements.....	iii
Table of Contents.....	vii
List of Tables	xiii
List of Figures	xiv
List of Abbreviations	xv
Chapter 1: Introduction to the Study	1
Higher Education, Indigenous Peoples, Minorities, and International Human Rights Law	9
Access to Higher Education as a Human Right.....	10
Indigenous Peoples and the Right to Higher Education	14
Minorities and the Right to Higher Education.....	16
Overview of the Study.....	18
Purpose of the Study	19
Statement of the Problem and Research Questions	21
Theoretical Framework	24
Significance and Contributions of the Study.....	29
Delimitations, Limitations, and Challenges	32
Organization of the Study.....	33
Chapter 2: Review of the Literature	35
Background	35
Theoretical Traditions and Literature About Indigenous Peoples, Minorities, and Access to Higher Education.....	36
Human Rights and Social Justice Frameworks	37
International Human Rights Discourses	38
Education for Social Justice	48
Minority and Indigenous Rights to Education	53
Critical Discourses and Perspectives.....	60
The Role of the Academic Institution.....	66
Higher Education for Social Change	68
Underrepresented Groups in Higher Education.....	71
Minorities and Indigenous Peoples' Unequal Access to Higher Education.....	73
Measures to Address Systemic Barriers: Affirmative Action and Quota Systems	78

Desegregation and Inclusion	86
Application of Indigenous Knowledge.....	88
Summary	91
Chapter 3: Methodology.....	98
Introduction	98
A Critical Framework on Decolonial Theory	99
Researching Minorities and Indigenous Peoples	100
International Human Rights Law Research and Analysis	104
Critical Discourse Analysis and Interpretive Policy Analysis Framework, Design, and Rationale	106
Research Framework	106
Critical Discourse Analysis	107
Interpretive Policy Analysis	110
International Human Rights Case Studies.....	112
Justification of Cases and Text Selection.....	116
Research Questions	121
Data Collection and Analysis.....	123
Critical Discourse Analysis and Interpretive Policy Analysis Methodological Approaches	123
Limitations, Delimitations, and Challenges of the Study	133
Challenges	137
Quality Assessment, Reliability, and Validity	140
Summary	144
Chapter 4: Barriers and Obstacles to Higher Education.....	146
Minority Groups and Indigenous Peoples Face	146
Introduction	146
Definitions of Minority Groups, Indigenous Peoples, and Higher Education within International Discourse	147
Minority Groups	147
Indigenous Peoples	150
Higher Education.....	153
Barriers and Special Measures to Access Quality Education for Minority Groups and Indigenous Peoples	158

Special Measures in International Law	159
Minority and Indigenous Cases in Brazil, Iran, and New Zealand	162
Afro-Brazilians and Indigenous Peoples in Brazil.....	162
Historical and Present Political, and Social Climate	162
Higher Education in Brazil.....	165
Bahá'ís in Iran	167
Historical and Present Political, and Social Climate	167
Higher Education in Iran.....	170
Māori in New Zealand.....	174
Historical and Present Political, and Social Climate	174
Higher Education in New Zealand	177
Summary	181
Chapter 5: An International Model for Minority Group and Indigenous Peoples' Equal and Equitable Access to Quality Higher Education	186
Introduction	186
Understanding Notions of Equal and Equitable Access to Quality Higher Education within International Discourse	188
World Conference on Higher Education for the Twenty-First Century	193
World Declaration on Higher Education for the Twenty-First Century: Vision and Action	195
Framework for Priority Action for Change and Development in Higher Education..	197
Perspectives on Access from the World Conference on Higher Education.....	197
Perspectives on Quality from the World Conference on Higher Education.....	211
Summary	216
Chapter 6: The Right and Access to Higher Education for Minorities and Indigenous Peoples: An International Analysis	219
Introduction	219
International Instruments that Promote Access to Higher Education for Minorities and Indigenous Peoples	221
Binding Instruments	223
Convention Against Discrimination in Education.....	223
International Convention on Elimination of All Forms of Racial Discrimination.....	228
International Covenant on Civil and Political Rights	232

International Covenant on Economic, Social and Cultural Rights.....	235
Convention on the Elimination of All Forms of Discrimination Against Women	238
Convention Concerning Indigenous and Tribal Peoples (ILO No. 169).....	240
Convention on the Rights of the Child	242
Convention on the Rights of Persons with Disabilities	245
Non-Binding Instruments.....	249
Universal Declaration of Human Rights	249
Declaration on Race and Racial Prejudice.....	251
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Religious Belief.....	255
Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities	261
Vienna Declaration and Programme of Action.....	264
UNESCO Universal Declaration on Cultural Diversity	269
Declaration on the Rights of Indigenous Peoples	274
International Definitions and Implications of “Equal” and “Equitable” Access to “Quality” Higher Education for Indigenous Peoples and Minorities	285
Summary	295
Chapter 7: The State and its Minorities and Indigenous Peoples: How Brazil, Iran, and New Zealand Address Access to Quality Higher Education.....	301
Introduction	301
Documents and Translations Analyzed	301
Brazil	304
Constitution of the Federative Republic of Brazil.....	304
Lei de Diretrizes e Bases da Educação (Law of Guidelines and Basis for National Education)	312
Lei de Cotas (The Quotas Law).....	318
Plano Nacional de Educação (National Education Plan)	323
Iran	330
Constitution of the Islamic Republic of Iran	330
Civil Code of the Islamic Republic of Iran.....	341
Islamic Supreme Revolutionary Cultural Council’s 1991 Memorandum.....	342
Letter from the Ministry of Science, Research and Technology to Iranian Universities	349
New Zealand.....	350
Treaty of Waitangi.....	351

New Zealand Bill of Rights Act 1990.....	353
Human Rights Act 1993	355
Education Act 1989.....	359
Tertiary Education Strategy 2014 - 2019.....	366
Ka Hikitia - Accelerating Success 2013-2017	374
National Definitions and Implications of “Equal” and “Equitable” Access to “Quality”	
Higher Education for Indigenous Peoples and Minorities	377
Indigenous Peoples and Minorities	377
Higher Education.....	382
Equal and Equitable Access to Higher Education.....	385
Quality of Higher Education.....	390
Summary	393
Chapter 8: Lessons Learned, Recommendations, and Conclusions	396
Introduction	396
Barriers to Higher Education and How Governments Responded.....	396
International and National Allusions to “Equal” and “Equitable” Access to “Quality”	
Higher Education.....	399
International and National Considerations of the Right to Higher Education	404
Lessons Learned: Strengths, Challenges, and Limitations of Comparative International and	
National Discourses.....	407
Strengths to Consider.....	407
Internationalizing or “Universalizing” Rights	407
Limitations of the Comparative Discourses	411
One Word, Many Meanings: Contradictory and Confusing Language, Missing	
Content, and Implicit Meanings	414
Varying Understandings of Indigenous Peoples and Minority Groups	417
Weak Coverage of Higher Education.....	420
Challenges of the Comparative Discourses.....	421
Reading Between the Lines: From Interpretation to Implementation (and Obstacles	
to Implementation).....	421
The Paradox of Indigenous and Minority “Identities”	425
The Ambiguity and Vagueness of International Human Rights and National	
Legislation and Policies.....	428
Invisible Agents, Visible Voices	429
Findings	431
Conclusion.....	437
Appendix	442

World Declaration on Higher Education for the Twenty-First Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education...	442
World Declaration on Higher Education for the Twenty-First Century: Vision and Action	442
Framework for Priority Action for Change and Development in Higher Education..	456
Bibliography	463

List of Tables

Table 2.1 International Instruments Addressing the Right to Education and Higher Education	41
Table 2.2 International Instruments Addressing the Educational Rights of Minority Groups	61
Table 2.3: Barriers and Bridges for Minorities and Indigenous Peoples to Access Higher Education	76
Table 3.1: Minority and Indigenous Cases for Analysis (by Country).....	124
Table 3.2: National-Level Discourses Relevant to Indigenous Peoples and Minority Groups'	125
Table 3.3: Units of Analyses Used in Discourse and Policy Analyses.....	132
Table 3.4: Critical Discourse Analysis and Interpretive Policy Analysis Variables of International Instruments	134
Table 3.5: Critical Discourse Analysis and Interpretive Policy Analysis Variables of National Laws and Policies	135
Table 5.1: The frequency of themes relevant to access to and within higher education in the World Declaration on Higher Education & the Framework for Priority Action.....	210
Table 6.1: Article 18 Comparison on the Right to Religion or Belief in UDHR and ICCPR	256
Table 7.1: National-Level Discourses Relevant to Indigenous Peoples.....	302
and Minority Groups' Access to Higher Education	302
Table 7.2: State Parties' Status of Treaties Relevant to Indigenous Peoples, Minorities, or Higher Education.....	303

List of Figures

Figure 3.1: Visual Diagram of Critical Discourse Analysis and Interpretive Policy Analysis	123
Figure 3.2: Stage Model of Qualitative & Quantitative Content Analysis	128

List of Abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Commission on Human Rights
BIC	Bahá'í International Community
BIHE	Bahá'í Institute for Higher Education
CADE	Convention Against Discrimination in Education
CEDAW	Convention on the Elimination of Discrimination Against Women
CBD	Convention on Biological Diversity
CDA	Critical Discourse Analysis
COP	Conference of the Parties
CRC	Convention on the Rights of the Child
COIAB	Coordenação das Organizações Indígenas da Amazônia Brasileira
CRPD	Convention on the Rights of Persons with Disabilities
DRRP	Declaration on Race and Racial Prejudice
ECHR	European Commission on Human Rights
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GUNi	Global University Network for Innovation
HDC	Highest Developed Country
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
INGO	International Non-governmental Organization
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
IUCN	International Union for Conservation of Nature
IPA	Interpretive Policy Analysis
ISRCC	Islamic Revolutionary Cultural Council
LDB	Lei de Diretrizes e Bases da Educação
LDC	Least Developed Country
MRG	Minority Rights Group International
MTRG	Mãori Tertiary Reference Group
NGO	Non-governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
PNE	Plano Nacional de Educação
TEO	Tertiary Education Organization
TES	Tertiary Education Strategy
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UPR	Universal Periodic Review
WINHEC	World Indigenous Nations Higher Education Consortium
WCIP	World Conference on Indigenous Peoples
WGIP	Working Group on Indigenous Populations
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Chapter 1: Introduction to the Study

Higher education has given ample proof of its viability over the centuries and of its ability to change and to induce change and progress in society . . . higher learning and research now act as essential components of cultural, socio-economic and environmentally sustainable development of individuals, communities and nations. Higher education itself is confronted therefore with formidable challenges and must proceed to the most radical change and renewal it has ever been required to undertake, so that our society, which is currently undergoing a profound crisis of values, can transcend mere economic considerations and incorporate deeper dimensions of morality and spirituality . . . Access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities, must be actively facilitated, since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations. Special material help and educational solutions can help overcome the obstacles that these groups face, both in accessing and in continuing higher education.

—UNESCO, 1998

The excerpt above, from the World Declaration¹ on Higher Education for the Twenty-First Century (United Nations Educational, Scientific and Cultural Organization (UNESCO), 1998)—the first of its kind, this declaration sets the tone for a “universal” definition and purpose of higher education institutions and systems globally. The declaration highlights many points, including: 1) higher education has the capacity to transform society beyond mere socioeconomic measures; 2) in order for such a transformation to take place, higher education, itself, must first undergo a new, total transformation that also includes the integration of moral and spiritual values (in addition to existing economic motivations); 3) access to higher education for indigenous peoples, minorities, and other “disadvantaged

¹ It is important to note that this declaration is not legally-binding at the international level, meaning its enforcement by adopted states cannot and will not be regulated. Further explanation on the distinctions between binding and non-binding international instruments is introduced is provided in chapter 4 and chapter 5.

groups” must be expedited so that their education and role in society may contribute to the transformation of communities and nations; and 4) when necessary, relevant solutions must be found and applied in order for marginalized groups and peoples to access and progress in higher education institutions (HEIs). These few excerpted lines from UNESCO’s World Declaration on Higher Education convey a firm belief that higher education institutions and systems can have long-term, intergenerational, and sustainable benefits within and across societies. Academic discourse on the subject of higher education reveals, however, that higher education is not fully understood along similar lines. The development of actual approaches to and perspectives on contemporary higher education are led by the knowledge-production of higher education scholars and “experts” who canonize human capital, “economic growth,” and “development” attributed to postsecondary education (Adedeji & Campbell, 2013; Callejo Pérez, Fain, & Slater, 2011; Kjelland, 2008; Oliver, 2004; Taubman & Wales, 1974; World Bank, 2002) on the one hand, and those who perceive post-secondary education systems as societal machines, perpetuating inequality, oppression, and widening of the gap between the “haves” and “have-nots” (Altbach, 1998; Altbach, 2010; Altbach, 2013; Carnavale & Strohl, 2013; Mettler, 2014; Unterhalter & Carpentier, 2010). Both of these phenomena of higher education institutions and systems can be attributed to national and international instances. While neither of these two perspectives is faulty nor inaccurate, they still tend to dominate the global higher education discourse, overlooking to address the potential and actual capacity and role of tertiary education overall. For instance, research addressing higher education for social change is more commonly found among scholars whose perspectives are framed within international human rights or social justice perspectives (Morin, 2001; Samuels, 2006; UNESCO, 1998).

The right to higher education, for many, is still an ideal hope, an aspiration. For UNESCO to raise the issue of those who are barred from accessing higher education, therefore, reveals that it is clearly a global problem, and its import within international human rights law discourse is ever-evolving. Human rights, at the most basic, essential levels have been identified as both sources of harmony and contention, especially with regards to life, security, and freedom (Kahl & Kahl, 2010). Much less attention, however, is paid to the right to education, for example, when compared to other basic rights (Landman, 2006). Despite real-world disparities that exist concerning access and quality of higher education, the right to higher education (and education in general) is clearly inscribed, in writing, in international human rights law. UNESCO adopted the Convention against Discrimination in Education (CADE) in 1960, and the Universal Declaration of Human Rights (UDHR) that preceded it in 1948 specifically mandates the right to education, as do its progeny of other covenants and conventions adopted by the United Nations (UN) General Assembly (GA) and its various agencies.² In promoting education as a basic human right for all, evidence of the benefits of education are also noted. The Millennium Development Goals (MDGs) and Education for All (EFA), for instance, have also emphasized the prominent, beneficial impact that basic education has on global societies, states, and territories, but they fall short of addressing equality and equity with regard to accessing higher education.

Since economists, politicians, educators, historians, and social scientists alike perceive higher education as a vehicle for development and a stronghold for human rights and basic liberties, one may wonder why vulnerable peoples would be denied access to higher

² Other charters advocating the right to education include: International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

education, let alone basic education. Whether the inability to access higher education is due to broad state-level systematic measures or “inherent” conditions at the individual/household level, obstacles to accessing higher education exist (Sayed, 2009). For instance, studies indicate that women and girls are denied education because of gender-based discrimination and stereotyping of gender roles (e.g., staying and working in the home, childhood marriage), which are usually grounded within sociocultural norms; and the conditions even worsen in most cases facing girls and women from minority and indigenous communities (Minority Rights Group International (MRG), 2009; 2011). In some cases, governments focus more broadly on making education equally accessible, rather than equitable for all, leaving most vulnerable peoples and groups to be further marginalized and excluded from attaining higher levels of education (Tomaševski, 2006). For instance, even if admissions criteria or requirements to a university were the same for everyone, not everyone would be equally qualified or prepared to meet such requirements due to unequal standards of schooling they experienced at the primary and secondary levels. Such a measure falls short of recognizing and responding to the unequal and inequitable disparities within the community and society at large. These are only a few examples, but the various barriers to access will be explored further in chapter 2 and chapter 4. Consequently, if children and youth are unable to access basic primary education, they are clearly unlikely unable to attend and complete secondary school in order to matriculate on to university or college. Unlike the case of primary education, access to higher education has received far less attention at the global level.

The benefits of tertiary education have not been disregarded, however, particularly as higher education institutions and systems continue to evolve and expand (Altbach, 2010;

Altbach, 2013; World Bank, 2002; UNESCO, 1995). Higher education is believed to serve as a core agent for social change and transformation from within, as well as for the progress and development of societies, particularly through peace-building, collaborative learning, economic growth, and intergenerational, long-term development and sustainability, to name a few (Global University Network for Innovation (GUNi), 2014; National Forum on Higher Education for Public Good, 2005; OECD, 2008; Samuels, 2006; UNESCO, 1998; UNESCO, 2009a), which are summarized in the subsequent chapter.

Despite the realities that data may present, however, the right to higher education has been denied to many throughout the globe, be it determined by an individual's socially-constructed socioeconomic class, racial or ethnic identity, gender, ideology, or religious beliefs, for example. The denial of higher education has been continuously used as a means of debilitating individuals within social, economic, and political terrains, especially among indigenous peoples, ethnic/racial, religious, and linguistic minorities (United Nations, 1991; Sebehara, 1998; Spring, 2001; Roma Education Fund, 2004; Jackson Preece, 2005; Cole, 2011). Article 26.1 of the Universal Declaration of Human Rights states: "Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit" (United Nations, 1948). Those most negatively impacted by the right to education are those among minority and indigenous populations (especially women and girls and persons with disabilities) across the globe, and it not only has to do with matters of *equitable access* to education but issues of *quality* as well, which is just as important. Although access to most public higher education institutions is dependent upon meeting specific admissions qualifications of merit (i.e., passing national entrance exams or "successful" postsecondary academic achievement), access to such institutions are

still not equitable. Granting one access on the basis of merit alone disregards the inequality and inequity that the poor, girls, and other vulnerable groups face at the primary and secondary levels of education, especially since there are great disparities in the quality of education for these communities (MRG, 2009; Thornberry, 1991; UNESCO, 1995). Unequal and inequitable access to quality resources for minorities and indigenous peoples at the primary and secondary levels, nearly guarantees they will meet unequal merit standards at the tertiary level.

The inequalities and inequities minorities and indigenous peoples face in education (among other spheres and sectors of life and society) in both “developing” and “developed” nations, and the potential of education in addressing these disparities are the main motivations behind why this study was conducted. Seeking an understanding of how minorities and indigenous peoples are perceived is only part of the greater focus. Although the meaning of a minority is highly contested and debated (Riddell, 2002), the appropriate definition of *minorities* in this context does not necessarily have to do with populations that are outnumbered with regard to population proportions. In other words, the limitation to *numerical* minorities is not necessarily the determining factor of how a minority is defined, and sometimes, it can even be misleading. For instance, in South Africa, the numerical minority is represented by the white South Africans, including Afrikaners, but they also hold a higher rank and status socially, economically, and politically compared to the black majority (MRG, 2008). Solely for the purpose of this research, therefore, “minorities” are defined as:

[N]on-dominant ethnic, religious and linguistic communities . . . indigenous and tribal peoples, migrant communities and refugees . . . groups that are not homogeneous . . . some members face further marginalization due to age, class,

disability, gender or other factors . . . [in some instances they are] among the poorest and most marginalized groups in society. They may lack access to political power, face discrimination and human rights abuses, and have ‘development’ policies imposed upon them. (MRG, 2009).

More importantly, however, people belonging to minority groups choose to maintain and develop their identities, which are threatened and alienated for the most part by the majority or dominant society and/or the state. This research focuses specifically on the right of national, ethnic,³ linguistic, and religious minorities and indigenous peoples.

A frequent question that arises regarding minority group identification is the status of indigenous peoples and how they fit into the classifying and defining of groups/peoples. Are indigenous peoples classified as minority groups, for instance? As is the case for minorities, indigenous peoples’ identities are not understood nor defined universally. So while there is no international definition that is universally agreed upon, international human rights discourse reveals that the status of indigenous peoples is unique, and although they can be classified as minorities, there are aspects of indigeneity that place indigenous peoples in a separate category altogether. There are specific United Nations mandates and mechanisms in international law, which allow indigenous peoples to protect their rights, which will be explained in this study. So clearly, there are significant distinctions that must be highlighted regarding the particular case of indigenous peoples.

³ The “ethnic” category includes all persons and groups protected under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) from discrimination based on race, color, descent (caste), national or ethnic origin, and citizen or non-citizen.

In his research entitled “Study on the Discrimination Against Indigenous Peoples,” UN Special Rapporteur José Martínez Cobo (1983) proposed a “working definition” of people of indigenous descent:

[I]ndigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (UN Commission on Human Rights, 1986).

In order to identify minorities and indigenous peoples, it is necessary to understand how and why they are marginalized are also recognized and addressed in policies and laws, including those that promote their access to higher education (UNESCO, 1998) and how the institutions and systems of higher education can best serve minority and indigenous students, as well as the greater society. Postsecondary education institutions have the potential to either perpetuate or impede social, economic political, and/or cultural-imposed barriers that minority groups and indigenous peoples face in accessing higher education. Therefore, it is important to study various aspects of tertiary education systems such as what kind of underlying value systems and structures exist within these institutions that contribute to such an influence (Apple, 2004), especially since institutions of higher learning have been attributed to socioeconomic and political development, as well as human security. The World Declaration on Higher Education and its accompanying Framework for Priority

Action for Change and Development in Higher Education (see Appendix) address the need for higher education structures and systems to be realigned and transformed to serve the best interests of all stakeholders, ensuring “continuing progress,” especially for future generations—highlighting a foundation of key objectives to be carried out at the national level: access, equity, quality, relevance and diversification⁴.

Higher Education, Indigenous Peoples, Minorities, and International Human Rights Law

With the challenges of defining indigenous peoples and minority groups, come the challenges of defining and securing the *rights* of indigenous peoples and minorities, especially within the context of international human rights law. The Officer of the High Commissioner for Human Rights (2012) identifies the “body” of international human rights as “[a] series of international human rights treaties and other instruments adopted since 1945 [that] have conferred legal form on inherent human rights and developed the body of international human rights.” Furthermore,

[i]nternational human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights (OHCHR, 2012).

⁴ Diversification is multidimensional in scope, referring to the diversity of higher education institutions; students, faculty, and staff; pedagogical styles and approaches; and research methods, for example.

Thus, the mere signing or adoption of an international instrument does not imply that human rights are upheld by the state. Action in favor of human rights must also be taken on the part of those states parties to exemplify that their efforts do not merely begin with words and end with words. This also holds true with regards to commitments to international instruments relating on the right to higher education for indigenous peoples and minorities.

Access to Higher Education as a Human Right

In addition to the World Declaration on Higher Education for the Twenty-First Century: Vision and Action and the Framework for Priority Action for Change and Development in Higher Education, there are other international human rights instruments—binding and non-binding⁵—that are relevant to the right to higher education and protections and rights for indigenous peoples and minorities. The international instruments included in this study include eight legally-binding treaties (six conventions and two covenants)—the Covenant Against Discrimination in Education (CADE); Convention Concerning Indigenous and Tribal Peoples (ILO 169); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); Convention on the Rights of the Child (CRC); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Civil and Political Rights (ICCPR); and International Covenant on Economic, Social and Cultural Rights (ICESCR)—and seven non-binding instruments (six declarations and one recommendation)— Universal Declaration of Human Rights

⁵ Binding instruments include covenants and conventions that requires states parties to adhere to the principles and actions set forth in the treaties, and they are upheld by international law. Declarations are non-binding, but they include many norms and standards that reflect principles that are binding in customary international law. United Nations conferences generate non-binding consensual policy documents, such as declarations and programmes of action.

(UDHR); Declaration on Race and Racial Prejudice (DRRP); Declaration on the Rights of Indigenous Peoples (UNDRIP); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; UNESCO Universal Declaration on Cultural Diversity; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; and Vienna Declaration and Programme of Action (Vienna).

Within the context of international law and human rights discourses, the significance of tertiary education is rarely highlighted when compared to issues in primary and even secondary education. However, due to the collaboration and partnership of various international entities and organizations and their commitment to expanding and improving the conditions and quality of higher education, there was a special gathering that opened with the following statement:

We commit ourselves to . . . opening schools, colleges and universities to adult learners . . . by calling upon the World Conference on Higher Education (Paris, 1998) to promote the transformation of post-secondary institutions into lifelong learning institutions and to define the role of universities accordingly (UNESCO, 1998).

The World Conference on Higher Education held on 5-9 October 1998 at UNESCO's headquarters in Paris convened, therefore, taking into consideration such recommendations and discussions that took place. The overall objective of the World Conference on Higher Education following the theme of "Higher Education in the Twenty-first Century: Vision and Action," therefore, was to "set the fundamental principles for an in-depth reform of higher education world-wide" (UNESCO, 2009a).

Ending with UNESCO's unanimous adoption of the *World Declaration on Higher Education for the Twenty-First Century: Vision and Action* and the *Framework for Priority Action and Change and Development of Higher Education* the conference was attended by 4,200 participants from 180 countries, including representatives from UNESCO member states, higher education experts, and intergovernmental and nongovernmental organizations from all world regions. This conference and the adoption of these two instruments marked the first exemplary unified action—at the international level—to publicly address and highlight the vital importance of higher education for future generations. More specifically, the declaration states that the “core missions and values” of higher education to “contribute to the sustainable development and improvement of society as a whole” include two missions in particular: the education, training, and conducting of research and maintaining autonomy, responsibility, an ethical role, and anticipatory function. In order to carry out such undertakings, a “new vision” of higher education must also be adopted.

Since minority group and indigenous peoples' access to higher education is the primary focus of this study, the emphasis on “equity of access,” “diversification for enhanced equity of opportunity,” and “enhancement of quality” in the World Declaration on Higher Education is of utmost significance. Not only are they among the key national objectives iterated in the World Declaration on Higher Education, but 1) these issues are also highly relevant and necessary in emphasizing the rights and inclusion of marginalized populations in higher education who too often face unequal, inequitable, low quality conditions in education; 2) they underline the importance that the diversity of higher education institutions and systems demand a diversity of alternatives for access; and 3) they reveal the greater benefits of higher education to disadvantaged groups and the societies in which they reside

(UNESCO, 1998). Consequently, this inaugural conference—highlighting a need for transforming higher education—set the cornerstone for future dialogues about the need for higher education to take place on a global scale.

A decade later (5-9 July 2009), the second World Conference of Higher Education was again held in Paris, with the overarching theme “The New Dynamics of Higher Education and Research for Societal Change and Development.” The 2009 World Conference was organized

pursuant to a Resolution adopted at the 34th Session of UNESCO’s General Conference (October 2007), requesting the Director-General to convene a world conference on higher education in 2009 to take stock of developments since 1998 and to re-examine the Frameworks for Priority Action for Change and Development in Higher Education adopted in 1998 so it can provide a basis for UNESCO’s activities to promote access to quality higher education (IWCE GmbH, 2009).

Over 1,500 participants were in attendance from over 148 countries at the conference, which concluded with a “call to governments to increase investment in higher education, encourage diversity and strengthen regional cooperation to serve societal needs” (UNESCO Bureau of Public Information, 2009). Recognizing the adopted Declaration and Framework at the 1998 World Conference on Higher Education, and responding to six regional higher education conferences subsequently held in Bucharest, Cairo, Cartagena de Indias, Dakar, Macau, and New Delhi, the agenda for the second conference was clear. At the conclusion of the gathering, a communiqué was drafted introducing action statements under six categories: 1) “Social Responsibility of Education”; 2) “Access, Equity, and Quality”; 3) “Internationalization, Regionalization, and Globalization”; 4) Learning Research and

Innovation”; 5) “Higher Education in Africa”; 6) Call for Action: Member States”; and 7) “Call for Action: UNESCO” (UNESCO, 2009b). Among those calls for action, states were called upon to “Guarantee equal access to underrepresented groups such as workers, the poor, minorities, the differently abled, migrants, refugees and other vulnerable populations” (UNESCO, 2009b, p. 8), and for higher education institutions and systems to “create mutually beneficial partnerships with communities and civil societies to facilitate the sharing and transmission of appropriate [indigenous] knowledge” in order to expand the current knowledge base and help solve challenges (p. 6). The challenges minorities and indigenous peoples face in the realm of higher education were thus recognized and addressed once again at the second World Conference on Higher Education, which reveals that their marginalization from mainstream societies has been a persistent global problem that has yet to be remedied. In spite of this, however, one of the most visible limitations of international human rights law in this regard is that there is an insufficient commitment to higher education for indigenous and minorities in the content and language of instruments adopted thus far. The level of discourse for these marginalized persons and groups still needs to be heightened globally and nationally.

Indigenous Peoples and the Right to Higher Education

As discussed further in chapter 4, indigenous peoples are recognized for their unique status in international human rights law, particularly because they “have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, [and] their right to development in accordance with their own needs and interests” (United Nations, 2007). Consequently, the extensive history of exclusion, exploitation, and extermination require that

international human rights standards call for indigenous peoples to be fully integrated and involved in the education of their communities. Significant differences between indigenous and mainstream communities require that indigenous peoples have the right to sustain customs, traditions, and other forms of knowledge. Education in indigenous communities is typically interconnected with family, religion and/or spirituality, moral order, and political relations, which often become a “collective responsibility within the group or community” (Abu-Saad & Champagne, 2006, p. 2). It is unlike the education common to formal mainstream education societies, which is more characteristic of competition and individualism (Abu-Saad & Champagne, 2006).

There are two primary international instruments that specifically target indigenous peoples, as well as their right to education—Convention Concerning Indigenous and Tribal Peoples (ILO 169) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Both instruments mutually reinforce the vital importance of self-determination and consulting with indigenous peoples regarding the education of their communities. Articles 26-31 of ILO 169 and Articles 13-16 of UNDRIP are specific to the right to education and knowledge-sharing, while sustaining and promoting indigenous cultures and values.⁶ Despite these international measures being adopted, however, there is still more that needs to be done to fully address the rights of indigenous peoples to education, particularly higher education, within the context of international human rights law.

In September 2014, the UN General Assembly held its sixty-ninth session high-level plenary meeting known as the World Conference on Indigenous Peoples (WCIP) at UN headquarters in New York, which was preceded by a number of “collaborative thematic

⁶ These two instruments are explored in detail in Chapter 6.

papers” written by the UN Inter-Agency Support Group (IASG) on Indigenous Issues on numerous topics including the right to education. The thematic paper highlighted some key findings relevant to higher education: indigenous learners tend to have less access to education, have to contend with poorer quality education, and do not enjoy the same benefits from education as non-indigenous learners; national and international efforts should be made to ensure that indigenous peoples have access to education that is culturally and linguistically appropriate and that does not aim at or result in unwanted assimilation; indigenous peoples must be supported and empowered to take the lead in developing quality education systems (as dictated in Article 14 of UNDRIP); the educational attainment of indigenous women and girls often lags behind that of other segments of the population. Therefore, special priority must be given to ensuring indigenous women and girls have access to and benefit from education; indigenous language revitalization programs should be implemented within and across education systems; and lastly, although second chance, vocational training and adult literacy education programs are often considered to be low priorities, they are an important element of inclusive education with many long-lasting benefits for indigenous peoples (IASG, 2014).

Minorities and the Right to Higher Education

Indigenous peoples are often identified as minorities because they share a common status of marginalization and exclusion most often rooted by colonialism, imperialism, and genocide. However, international human rights law makes a clear distinction between indigenous peoples and minorities, which primarily has to do with the history and nature of the forces of colonialism and inherent land and territorial rights unique to indigenous peoples. In international human rights law, minorities are identified along different

categories (ethnic (or racial), national, linguistic, and religious) as previously mentioned. Like indigenous peoples, however, minorities often also experience discrimination and are denied the right to education because of their identities. For this reason, international instruments protecting the rights of minorities have been adopted.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Declaration on Race and Racial Prejudice, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities all address the rights of minorities. However, not all of them address their right to education or higher education specifically (as discussed in chapter 6).

In 2008, the first session of the UN Forum on the Rights of Minorities was held in Geneva, and thematic focus on this session was the right to education. Some of the recommendations from the first session reveal the unequal and low-quality education that most minority groups endure. A sample of such recommendations include: states should review, enact and amend their legislation where necessary to affirm the right to education for all, eliminate discrimination and guarantee quality education for all members of minorities; budgetary allocations for education should be transparent and amenable to external scrutiny, especially those targeting class or gender characteristics of minorities; education programs for the training of minorities and educators, including curricula and texts, should be made available in minority languages; state or local policies or practices—*de jure* or *de facto*—that

result in separate classes or schools for minority students, or schools or classes with grossly disproportionately high numbers of minority students, on a discriminatory basis, are prohibited, except in limited and exceptional circumstances; and efforts should be made to ensure that educational services offered should reach minorities and their community needs nationally (Office of the High Commissioner for Human Rights (OHCHR), 2011).

Overview of the Study

Through the application of a two-part content analysis methodological approach (critical discourse analysis and interpretive policy analysis), framed interdisciplinary, critical theories (Ashcroft et al., 1989; Bourdieu, 1993; CCCS, 1982; Césaire, 1972; Dissanayake, 1988; Fairclough & Wodak, 1997; Fanon, 1986; Foucault, 1972, 1980; Hall, 1999; Kincaid, 1987; Wa Thiong'o, 1986; Said, 1978; Shi-xu, 2007; Smith, 2012) and international human rights frameworks, this study highlights policy and strategic measures that have been made to address the unequal and unjust experiences of indigenous peoples and minority groups in accessing higher education, namely, in three countries: Brazil (Afro-Brazilians and indigenous peoples), Iran (Bahá'ís), and New Zealand (Māori).⁷ Within each of these three countries, there are minority and indigenous populations that are currently (and historically) facing challenges and barriers to accessing and/or being admitted to institutions of higher learning due to systematic or unmethodical means of oppression and discrimination based on ethnic, linguistic, religious, or gender-based identities, to name a few. States, therefore, often introduce higher education policies and strategies that specifically target access to

⁷ Although this study focuses on three countries, the researcher is highly aware that limited and/or nonexistent minority access to higher education is an issue in many other countries and regions throughout the globe. For the purposes of this study, however, the minority groups in focus will come from these particular countries, as they each provide a unique response to minority access to higher education, and relevant secondary data on these respective countries is also sufficiently available for analysis.

higher education for such vulnerable groups and peoples, including Brazil, Iran, and New Zealand, in this case. The content and language of these national policies and strategies will be compared to international instruments (binding and non-binding) that specifically address minority and indigenous recognition and their right to education, and higher education in particular. An integration of international human rights law, critical theory, minority rights, decolonization, identity, indigenous knowledge, and justice frameworks set the contextual background for the analysis of the study. The following sections introduce the purpose of the study; research questions that guide the study; collective theoretical frameworks; significance and contributions of the study; limitations of the study; and the organization of the study.

Purpose of the Study

Overall, the aim of this comparative analysis is twofold—descriptive and normative. First, it helps the researcher better understand how the UN system and select state governments recognize and comprehend the nature of the higher education conditions of minority groups’ and indigenous peoples—Afro-Brazilians and indigenous peoples in Brazil; Bahá’ís in Iran; and Māori in New Zealand—particularly, through the manner in which how governments and their education ministries address access to higher education at the national level and how their laws and policies compare to the standards upheld by international human rights law.⁸ It explores the *extent* to which the UN system of international human rights and governments are advocating for and protecting the higher educational rights of minority groups and indigenous peoples; how such national

⁸ These standards will be based on those provided in *Minority Rights: International Standards and Guidance for Implementation*, which was published by the United Nations Human Rights Office of the High Commissioner (2010).

commitments *compare* to international human rights law treaties and instruments regarding the *educational rights* of minorities and indigenous peoples; how *rights to higher education* are addressed in such international instruments; how *minority and indigenous groups' rights to higher education* are presented within international instruments; and the strengths and weaknesses that are manifested in comparison of international instruments and nation-based policies and strategies regarding minority and indigenous rights to higher education. Secondly, the analysis that will compare standards upheld by international human rights law to country-level policies and strategies of ensuring minorities and indigenous peoples' access to higher education is expected to be more than *descriptive* in nature. In fact, since this study is pivoted by a social justice and/or human rights perspective the researcher concludes the analysis with recommendations and implications, seeking to propose how minority group and indigenous peoples' access to higher education can be improved within these respective cases. For the most part, the concept of normative analysis that is proposed in this paper is used within the context of law. When explaining normative analysis, D'Amato (1984) describes it as "descriptive analysis of how a decision [or action] ought to be decided. We cannot understand what 'law' is unless we add a large dose of what decision-makers think the 'law' ought to be" (p. 223), and he continues, stating that law

cannot be completely existential. It can never be adequately described or "nailed down"; it cannot be totally programmed into a computer. Rather, "law" contains within itself a normative element. It is forever striving; it is not permanently static To approach our subject cognizant of this duality—the law that *is* and the law that creators and subjects of the law believe it *ought to be*—is to engage in normative analysis (p. 224).

The *normative* analysis in the conclusion section (Chapter 8), therefore, concentrates on how national and international laws and policies can be improved, as well as whether or not current international instruments that are both legally binding and non-binding need to be revisited and/or better understood (Brown, 1992; Lepard, 2010).

Statement of the Problem and Research Questions

The global landscape of postsecondary education is ever-evolving. With the expansion of privatized higher education institutions and the introduction of massive open online courses (MOOCs) in the “developed world,” the global population of those enrolled in higher education is steadily rising. Meanwhile, the gap in tertiary enrollment rates between developed and developing nations is expanding, and similar disparities *within* countries are also widening (UNESCO, 1995). Data from around the world indicate that minority and indigenous populations are largely underrepresented within education institutions at the postsecondary level (Altbach, 2010, 2013; Council of Europe 1992, 1993, 2006; Gasman, Baez, & Sotello Viernes Turner, 2008; UNESCO, 1995). In some cases, for minority and indigenous students who do access higher education worldwide, they are often faced with various challenges regarding enrollment and retention at colleges and universities, and this usually has to do with inadequate preparation and a lack of resources at the secondary level (Swail, Redd, & Perna, 2003). Thus, diversity within higher education institutions—especially public universities and colleges—is usually lacking. Altbach (1998) finds that university students in the developing world are considered to be the most affluent and “elite,” not necessarily representing the heterogeneity of a respective country’s population. For instance, in transitional and developing countries, most university students represent urban populations whereas the countries themselves are predominantly rural. In most instances,

minority groups and indigenous peoples are highly underrepresented in institutions of higher learning for numerous reasons (to be discussed further in the next chapter). Therefore, it is unlikely that minority populations have reached an equivalent level of education or affluence to gain equal access to postsecondary education. The primary focus here is to understand how the rights of specific underrepresented populations (i.e., minority groups and indigenous peoples) in equitably accessing higher education are advocated and implemented, as they compare to international standards of the right to education, especially higher education. The proposed cross-country comparison of this study will also grant the researcher with an opportunity to understand how minority groups' access to higher education can potentially improve within each of these three countries.

In order to fulfill the *descriptive* content analysis component of the study, the following research questions are proposed:

- 1) To what extent is the right to higher education conveyed in international treaties/instruments and national policies and legislation? How are the higher educational rights of minority groups and indigenous peoples in particular addressed in international treaties/instruments and national policies and legislation?
- 2) How do international human rights discourses compare to country-level policies and strategies to protect minority groups and indigenous peoples' rights of equal and equitable access to quality higher education?

To further support the main research question, the following sub-questions are also posed:

- a) What barriers are minority groups and indigenous peoples facing to access higher education, and how are governments advocating for and protecting the higher educational rights of their minority and indigenous populations?
- b) How are “equal,” “equitable,” and “quality” education factored in regarding the right of minority groups and indigenous peoples’ access to higher education within international instruments and national/local policies and practices?
- c) How do national-level policies and strategies promoting equitable access to higher education for minority groups compare to international human rights law treaties and instruments regarding the right to higher education for minority groups and indigenous peoples?

Understanding how authentically minorities and indigenous peoples are recognized both in policy and practice, will enable representatives, drafters, and policy and lawmakers to design better policies to promote minority groups and indigenous peoples’ equal and equitable access to quality higher education. The descriptive component of the study, therefore, seeks to understand how such rights and protections within country-level policies and strategies and international instruments are addressed. The normative analysis transforms this understanding on how to better inform the challenges visible within such policies and strategies at the national level so they can be overcome, weaknesses can be diminished, and limitations can be accommodated.

Lepard (2010) argues that “customary international law cannot be identified without a normative background framework” (p. 10). In this study, the normative analysis will frame both national and international-level discourses since they are being compared. The normative analysis of this study is dependent upon the answers to the underlying descriptive

questions posed above. Unless and until the phenomena of international and national discourses addressing indigenous and minorities' equal and equitable rights access to quality higher education are understood, recommendations for improvement of these policies and strategies cannot be made. Thus, the normative analysis in chapter 8 addresses questions such as: What are the strengths and weaknesses of international conventions and declarations that address the right to equitable access and quality higher education for indigenous peoples and minority groups? What are the strengths and weaknesses of national-level responses that address the right to equitable access and quality higher education for these same groups? How can efforts and responses promoting indigenous peoples and minority groups' equal and equitable access to quality higher education be improved at the international and national levels?

Theoretical Framework

Given that the focus of this study is on the right to equitable access to higher education for minority and indigenous populations, it is appropriate to discuss theories of social justice and human rights. Before introducing social justice, however, Rawls' (1971) *A Theory of Justice* touches on a significant point specific to marginalized and oppressed populations such as minority groups. The main concept behind Rawls' theory of justice is based on the idea that all primary social goods (i.e., liberty, equality, wealth, income, health, etc.) should be equally distributed unless an unequal distribution of any and/or all social and economic goods is beneficial to the "least advantaged" or "least favored" group. Thus, in this instance, Rawls would most likely perceive justice to favor equal access to higher education for minority groups unless an unequal distribution of access to higher education is to the advantage of the underrepresented group. There are two specific principles that Rawls

abides by in order for the theory of justice to be valid. The first principle is relevant to *liberty*, and the second principle is based on *wealth*. Piccard's (2005) analysis of Rawls' principle of liberty states that "[e]ach person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." Regarding wealth, Rawls calls for the arrangement of social and economic inequalities to be of greatest benefit to the least advantaged as long as they adhere to the "just savings" principle and that labor and work are open to all providing that they offer equity of opportunity. In other words, Rawls contends that justice is only possible if everyone has equal distribution to the access of goods, such as in the case of resources relevant to higher education. What is *not* clear, however, is how Rawls would argue for what is *equitable* versus what is *equal*. It appears as though Rawls is arguing that both equality and equity are synonymous, but this would be an inaccurate assumption, because equity fills the gap of inequality when resistant forces to equality exist. Given this same assumption, however, Rawls' theory of justice would most likely be in favor of offering "temporary special measures" as indicated in the Convention on the Elimination of Discrimination Against Women (CEDAW) in 1979 and as recommended by the Committee on the Elimination of Racial Discrimination (CERD) in 2009 for disadvantaged groups such as women and those belonging to minority groups in order to advance equality (United Nations Human Rights Committee). Unlike Rawls' analysis of justice, a more contemporary approach to addressing the equality (and equity) of marginalized groups has been rooted in social justice theory.

Social justice, as addressed by Ayers, Quinn, and Stovall (2009) involves the *inclusion* of oppressed and marginalized populations, such as minorities and indigenous peoples, where the principle of providing equal opportunity for all is the motivating factor. Social justice

approaches may encompass a multitude of beliefs, concepts, and ideas. However, the overarching promotion of equity, of *justice*, underlies all social justice theory, and therefore, it has also been understood and applied in much broader and contemporary forms. Capeheart and Milovanovic (2007) define social justice as a process that

must begin with an examination of how dominant and non-dominant conceptions of justice arise; how they are selectively institutionalized; how they are formally and informally applied; what persons and/or groups are being deprived of its formal mandates; and how, finally, to correct deviations so that justice is served (p. 2).

In other words, social justice is a movement for reform and advancement on behalf of those who are deprived of the opportunity for equality in society. While Capeheart and Milovanovic (2007) believe that advocacy for the oppressed greatly contributes to social justice, they also believe that it is far more complex than standing up for the rights of the oppressed. More importantly, they argue that “[s]ocial justice is not in the narrow focus of what is just for the individual alone, but what is just for the social whole” (Capeheart & Milovanovic, p. 2, 2007).

There is no static or unified meaning of what social justice within an educational context actually is, but the general understanding is shared that proponents of social justice believe that all the components and factors vital to effective education systems—schooling, curriculum, pedagogy, policy, culture, politics, and the economy should promote the expansion of democratic values (Ayers, Quinn, & Stovall, 2009). Ayers et al. (2009) argue that social justice in education is dependent upon four primary principles: equity, activism, inclusion, and social literacy.

Like social justice, the meaning of human rights is not determined by one common set of values. Nevertheless, international human rights law is understood to be universally binding for all states, nations, and territories that are signatories to international treaties associated with more specific categories of rights. There are three specific areas or “generations” of human rights—1) civil and political (i.e., right to life and political participation); 2) social, economic and cultural rights (i.e., right to subsistence); and 3) solidarity rights (i.e., right to peace, clean environment, etc.) (Landman, 2006). Civil and political rights as well as social, economic and cultural rights (the first two generations of rights) are considered to be the most imperative (Davidson, 1993; Donnelly, 1997; Forsythe, 2000) only because solidarity rights⁹ are highly debated, and they also lack both legal and political recognition (Alston, 2005). According to international human rights law, the rights of minority groups and indigenous peoples and the right to education fall under civil and political rights, as well as social and economic rights, respectively.

Minority rights are protected by international civil and political treaties, particularly, the International Covenant on Civil and Political Rights (ICCPR), which was adopted by the United Nations General Assembly in 1966, requires member-state signatories to protect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. The UN Declaration on the Rights of Persons belonging to National or Ethnic ,

⁹ “In his report to the Human Rights Council (A/HRC/15/32, July 2010), former independent expert [on human rights and international solidarity] Rudi Muhammad concluded that international solidarity is a precondition to human dignity, the basis of all human rights, and a human-centred approach to development, and has a bridge-building function across all divides and distinctions. It encompasses the values of social justice and equity; goodwill among peoples and nations, and integrity of the international community; sovereignty and sovereign equality of all States, and friendly relations among them” (UN Office of the High Commissioner, 2012).

Religious and Linguistic Minorities was adopted by the General Assembly on December 18, 1992, and it is the only international instrument of its kind that is solely applicable to the rights of minorities that calls for the non-discrimination and protection of minority groups.

The reason for the UN System's overdue recognition of minorities can be traced back to the League of Nations System of Minority Guarantees, which were not specifically focused on minority *rights*, but did indeed reveal that states and governments were committed to addressing *some* of the marginalized conditions of minorities across Central and Eastern Europe (Jackson Preece, 2005; Thornberry, 2012). Although, some may argue that minority rights are situated within the broader context of human rights, and should therefore be considered one and the same, some scholars would argue that minority rights are in a separate sub-category that is much more specific to a unique segment of the world's population (Landman, 2006; Dersso, 2007). Minority rights are indeed a category of human rights (as are children's rights or women's rights), but they are also important to consider as a separate group since not all human beings are necessarily identified as belonging to minority groups. Thus, in addition to presenting international legal instruments regarding minority rights into the study, literature including local and global concepts of minority rights, as well as liberal and multicultural minority rights theories of Kymlicka (1995; 2001) and Dersso (2007) are also discussed.

To further complement the overarching social justice and rights-oriented frameworks for analysis, this study likewise considers the association between social inclusion theory and higher education policies, particularly through a critical analysis of traditional and contemporary social inclusion theories. This approach helps frame the analysis of a postsecondary institution as a tool for promoting social justice and minority

rights. Although in its nascent stages of understanding its development and implementation within the international arena, a social justice framework presents a complementary perspective to issues relevant to oppression, injustice, inequity, and inequality that are often dealt within the sphere of international human rights law.

Since three national-level responses to promoting higher education access for indigenous peoples and/or minority groups will also be analyzed, literature addressing methods such as affirmative action and the quota system, minority-serving institutions (MSIs), education policies for minority groups, desegregation strategies, distance education/online learning, and the utilization of indigenous knowledge will be introduced in the literature review.

Significance and Contributions of the Study

Two non-binding international instruments that were drafted and adopted by the participants of the World Conference on Higher Education in October 1998 have clearly indicated the actual and potential values and benefits of higher education. In these two documents, equitable access for minority groups and indigenous peoples to higher education is also emphasized. Rarely do we ask ourselves what the purpose of higher education is and why underrepresented groups need to be included among those who benefit from accessing it at both national and international levels. Most dialogue relevant to the right to education, including equal and/or equitable access to education is highly emphasized within the realms of primary (“basic” education) and in most cases, secondary education as well, but not so much in regards to higher education. In its adopted report entitled “Commentary on Education under the Framework Convention for the Protection of National Minorities,” the

Advisory Committee on the Framework Convention for the Protection of National Minorities for the Council of Europe (2006) observes:

While there is relatively rich information with regard to primary education in the Reports of most State Parties (including also pre-school education) there is much less detail as regards access of minorities to higher education and of availability of higher education in minority languages, history, culture etc. (p. 14).

Since international standards of education very rarely address higher education especially in regards to equitable access and high quality education for minority groups and indigenous peoples, this study sheds light on a unique international analysis of the right to higher education, while comparing it to three distinct national cases.

Just as in international human rights standards, scholarly literature on higher education regarding minority students is also limited in scope, especially since most of the research is conducted within and from a “Western” perspective. Literature addressing how universities have worked to specifically recruit minority students through the implementation of affirmative action in the United States is quite a popular topic of analysis, for instance (Rhoads et al., 2005), as well as debate, such as in the 2013 U.S. Supreme Court case *Fisher v. University of Texas* or its 2014 upholding of Michigan’s constitutional amendment that bans affirmative action policies in admissions to public universities (Liptak, 2014); but there are universities in the U.S. and especially those around the world that still adopt affirmative action policies and other “temporary special measures” at the local and national levels in other parts of the world, including Bangladesh, Brazil, Canada, India, Iran, New Zealand, Tanzania, for example (Kovach, Bjornson, & Montgomery, 2008; MRG, 2009; Muganda, 2008). However, research and analysis on these cases are lacking, particularly as they

compare to international human rights standards. Studies about higher education institutions including indigenous and minority students in other parts of the globe, including developing countries are either too general or non-existent (MRG, 2009). Furthermore, most of the global literature about education for indigenous and minority students that does exist is limited to micro-level studies of primary and (sometimes) secondary levels.

Most social inclusion inquiry relevant to human rights and higher education is specific to micro-level cases that are dominated by countries in the Northwestern hemisphere or former British Commonwealth countries (i.e., Australia, U.K., and U.S.) (Basit & Tomlinson, 2012), so there is a lack of diversity within the international arena regarding social inclusion and exclusion discourses, including macro-level cases. International human rights discourses are rarely addressed, and if so, they are done so at a minimal extent (Osler, 2012). The cases of vulnerable populations and disadvantaged groups such as indigenous peoples and minorities calls for an understanding of the context that these groups come from. It is necessary to note, therefore, that the commonly adopted approach to achieving social inclusion “requires that the broader issue of social exclusion be addressed” (Atkinson & Marlier, 2010). This study identifies and compares policies and strategies that address both social exclusion and social inclusion in Brazil, Iran, and New Zealand to international human rights norms, standards, and laws—something that has yet to be studied and analyzed by scholars and practitioners in the field.

Along similar lines of the above discussion on social inclusion theory, there lies this focus on country-level laws or policies adopted to promote the equitable access of minority groups and indigenous peoples to higher education. Of course, these national policies and strategies are unique in their own respective ways, but the common or shared purpose each

of these three national-level actions serves is to ensure local minority groups equitable access to higher education institutions. Currently, there are no studies conducted that compare such actions relevant to higher education across several diverse country and minority and indigenous cases such as this inquiry. Rather, studies are limited to either focusing on one action in a particular country (e.g., minority-serving institutions in the U.S., implementing affirmative action policies in Brazil, etc.) or on a common response shared between two cases such as a comparative analysis of affirmative action policies adopted by higher education institutions in India and the United States, for example (Weisskopf, 2004; World Bank, 2005; Gupta, 2006). This research is unique, therefore, and makes a significant contribution to the fields of human rights, minority studies, indigenous peoples' studies, and national higher education policy in comparing multiple country cases, while taking international human rights standards into consideration.

The nature of the applied critical discourse analysis and interpretive policy analysis in this study also provides an opportunity for the subject to be addressed beyond a strictly descriptive presentation, providing the researcher with an opportunity to introduce and suggest implications and recommendations within policy, theoretical, legal, and practical spheres. Such implications and recommendations are suggested with the hope of contributing to future explorations for improving minority groups and indigenous peoples' access to high-quality higher education within these respective countries as well in the context of international human rights law.

Delimitations, Limitations, and Challenges

There are several limitations and challenges that the researcher faced in conducting this inquiry, and most of the setbacks have to do with the former rather than the latter. For the

most part, the limitations of the proposed study have to do with the methodology of the study, particularly the data sample, collection, and analysis. The combined application of critical discourse analysis and interpretive policy analysis are simply theoretically-framed approaches to the broader methodology of content analysis. Content analysis is an “analysis of the manifest and latent content of a body of communicated material (as a book or film) through classification, tabulation, and evaluation of its key symbols and themes in order to ascertain its meaning and probable effect” (Krippendorff, 2012, p. 7). Like any mode of inquiry, limitations, delimitations, and challenges are bound to exist, and the same is true for critical discourse analysis and interpretive policy analysis approaches, in general (Krippendorff, 2012; Locke, 2004; Neuendorf, 2002; Weber, 1990; Yanow, 2000).

Limitations and challenges were attributed to the combined methodologies of critical discourse analysis and interpretive policy analysis, as well as the secondary data content of both national-and-international-level discourses collected for this study. Chapter 3 (“Methodology”) and chapter 8 (“Lessons Learned, Recommendations, and Conclusion”) further explicate the various limitations and challenges that these factors posed throughout the study, as well as how they were resolved or dealt with.

Organization of the Study

There are a total of eight chapters in this study, including the introductory chapter. Chapter 2 presents the review of literature that forms the integrated framework for the study. Chapter 3 introduces the details of the methodological approach of the research as it relates to the application of critical discourse analysis and interpretive analysis. In chapter 4, the contextual backgrounds of higher education in Brazil, Iran, and New Zealand are addressed in order to create a foundational understanding of the respective barriers and

obstacles minorities and indigenous peoples face in these three countries that affect their access to quality education and how state governments are responding to them. Chapter 5 is the section of the study that introduces the core international instruments and standards that are relevant to education and/or higher education, indigenous peoples, and minorities. Chapter 6 focuses on an analysis of the ancillary instruments that are applicable to higher education, minorities, and indigenous peoples to varying degrees, while chapter 7 focuses on analyzing national-level policies and strategies that are specific to an integration of these same three areas. Finally, chapter 8 includes the comparative analyses between the national and international discourses, provides normative analysis via recommendations for improvement, and final conclusions.

Chapter 2: Review of the Literature

Background

The select body of work that frames the scope of this research can be grouped into four thematic categories of literature: human rights and justice, critical discourses and theory, higher education for social change, and access for disadvantaged groups and vulnerable populations (indigenous peoples, minorities, poor, women and girls, etc.) in higher education. These four categories help the researcher identify existing literature relevant to studying minority groups and indigenous peoples' rights to gain equitable access to higher education at the national and international levels. This section also explores literature and theories of the role of higher education (i.e., universities, colleges, technical and vocational schools, and their systems) have played in serving minority and indigenous populations. Case studies examining legislative and policy measures that target indigenous peoples and minority groups' access to higher education institutions are also examined. Theories relevant to higher education, indigenous peoples, minority groups, educational rights, international human rights law, social justice, as well as temporary special measures and other national-level approaches to addressing minority groups' equitable access to higher education are explored further. Most importantly, this review of the literature will also highlight the relationship between higher education institutions and social change in society. International rights of indigenous peoples and minorities are part of a larger framework of international human rights, which are grounded in international law. Aside from the legal foundations of international human rights and minority and indigenous rights, however, there are several classical and contemporary theories that shed light on various perspectives concerning the rights of indigenous peoples and minorities within a global context. While dominated by the legal field, new human rights theories are emerging from the sociological, anthropological,

philosophical, and development fields, including studies on justice. The rights of minorities and indigenous peoples, therefore, especially their right to education, are recognized by more up-and-coming researchers and practitioners in the field, particularly targeting critical discourse philosophies and theories. The study of minority and indigenous rights would not be complete, however, without the complementary contributions of social justice advocates and scholars. Social justice theories, including those of feminism, political economy, and critical race theory, yield an added value to the discourse that advocates for the rights of and equality for marginalized and oppressed populations. Within existing governing structures and systems, where majority-minority dichotomies are to be anticipated, the social justice literature also highlights the importance of identity preservation, decolonization, and application of indigenous knowledge as they relate to equity and access to higher education. Examples of how universities and colleges are working to promote the rights and inclusion of minorities and indigenous peoples globally are of valuable importance to this exploration, particularly including the roles of minority-serving institutions (MSIs), the implementation of distance education and online learning programs, and cultural-linguistic preservation and sustenance programs for indigenous and minority students.

Theoretical Traditions and Literature About Indigenous Peoples, Minorities, and Access to Higher Education

“Minority rights” or “indigenous peoples’ rights” have multiple implications, interpretations, and definitions, but the common underlying understanding of the protection of minorities and indigenous peoples is their marginalization and oppression by the dominant society and/or the state. Unequal resources and access to education are no exception. Minorities have been systematically or unmethodically excluded from education systems for centuries throughout the globe. As a result, many proponents of educational

inclusion of and rights for indigenous and minority populations have introduced alternative strategies to overcome marginalization (MRG, 2009; Sayed, 2009; Thomas, 2009; Thornberry, 1991; Tomaševski, 2006). The challenges or barriers that minority and indigenous populations face in accessing education are based on a combination of one or more of cultural, economic, political, and social means of oppression imposed by a dominant or majority segment of society and/or even within their own communities (MRG, 2009). Scholars and practitioners across many disciplines have contributed their perspectives regarding international human rights and justice frameworks, minorities and indigenous peoples' rights, critical discourse and theories, higher education for social change, and national and international policies that promote access to higher education for disadvantaged and vulnerable groups. In the subsequent sections, therefore, some of these perspectives are introduced, and their relevance to the purpose and objectives of this study are discussed.

Human Rights and Social Justice Frameworks

The educational rights of minorities and indigenous peoples are vital to discussing the significant impact that the fields of human rights and justice studies have made to the field of education. International human rights law, in particular, functions as the overarching framework for indigenous peoples and minority groups' protection at the national and global levels. Social justice theories help fill in the gaps and ambiguities international human rights discourses leave open, addressing matters relevant to discourses on minority groups and indigenous peoples such as access, equality, equity, empowerment, identity preservation, inclusion, quality of resources, and social transformation.

International Human Rights Discourses

The international human rights field has been dominated by the discipline of international law. However, recent scholars of human rights believe that there is both “increased space” and need for a social science approach to studying human rights (Landman, 2006). Verschraegen (2002) even finds it “surprising” that sociologists have neglected to pay closer attention to human rights given that the Universal Declaration of Human Rights—although far from perfect—is “widely known and almost universally accepted” (p. 259). Freeman (2001), MacIntyre (1971), and McCamant (1981) also argue that the discipline is in dire need of a social science analysis of human rights problems. Therefore, it is likely (and even necessary) for human rights to be studied and analyzed through a social sciences lens. Landman (2006) claims that the social science approach to human rights is necessary based on the following five assumptions: 1) The goal of empirical social science is the explanation and understanding of observed social phenomenon; 2) cross-cultural generalizations are an essential and inherent feature of human rights research since the international law of human rights sets a universal ideal standard against which country performances and cultural contexts are compared; 3) there are few “laws” in the social sciences, and generalizations will always be paired with varying degrees of uncertainty; 4) the social science analysis of human rights problems can take place in the absence of agreed philosophical foundations for their existence; and 5) the positivistic tradition of contemporary social science is not as problematic as what some critics may contend. Thus, according to Landman, as long as researchers are cognizant of the limitations of both social science inquiry and human rights research, and make efforts to account for or work within all those limitations, then it is possible and even worthwhile to carry out a social sciences-

based analysis of human rights. In order to consider a study of human rights within the social sciences field, however, we must first understand the framework of international human rights law.

Unlike popular belief, legal “charters” for human rights have existed long before the Universal Declaration of Human Rights (UDHR) was formally drafted and adopted by the United Nations General Assembly (Freeman, 2001; Jackson Preece, 2005). However, founded upon the principles set forth in the Charter of the United Nations, UDHR is an inaugural, stand-alone attempt at “universal” law for all, especially since the drafting and adoption of UDHR in 1948 was based on the first and only systematic process of centralizing and defining human rights protections internationally. Such a system or concept is strongly opposed by cultural relativists and some critical theorists who argue that the “security” and well-being of a diverse human race cannot be captured within an international framework (this critique of international human rights law is explored in a subsequent section titled “Critical Discourses and Perspectives”).

In addition to the Universal Declaration of Human Rights, there are numerous treaties that are included, which have been adopted by some member states in the form of international covenants and conventions. Examples include: the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the International Covenant on Civil and Political Rights (ICCPR) (1966), and the Convention Against Discrimination in Education (CADE) (1960). Each document is treated as a separate agreement between the United Nations General Assembly or the respective United Nations agency (e.g., UNESCO, United Nations Development Program (UNDP), etc.) that authored and adopted it and the states parties that are signatories to the respective treaties. In other words, states parties may

be signatory to the Universal Declaration of Human Rights (which is not legally binding) but may not have ratified the Convention on the Rights of the Child (CRC) (which *is* legally binding). As a matter of fact, a state's decision to ratify or accede a covenant or convention is completely voluntary, and all states parties have the right to make reservations, understandings, and/or declarations (RUDs) at the time of ratification, acceptance, approval, or accession (Newman & Blau, 2012). Thus, a major challenge that the United Nations continues to face is the international enforcement and legitimacy of human rights law with states parties that have acceded, ratified, or signed binding treaties; nor are there transparent accountability measures in place, as states parties are only required to submit self-reported progress reports every few years to respective review committees (e.g., the Committee on Racial Discrimination (CERD) conducts universal periodic reviews (UPRs) of periodic reports submitted by states addressing their national-level enforcement of the International Convention on the Elimination of Racial Discriminations (ICERD)). Helfer (2002) further argues that obstacles exist within international human rights law enforcement and holding member-state signatories accountable, where some decisions made are not strictly enforced despite being legally binding, while others are not, such as those of the international court tribunals. This is one of the major critiques of the United Nations General Assembly and its implementation of international human rights law, particularly when it comes to guaranteeing and enforcing the protection of respective human rights on a global scale.

Aside from what the critics say about international human rights law, Verschraegen (2002) stresses the significance of the universal reach and protections that international charters are capable of monitoring, especially in regard to protecting the equal right to access quality education (see Table 2.1 for a list of the contemporary international instruments that

specifically address non-discrimination and the right to education). Article 13 of the International Covenant on Economic, Social and Cultural Rights states:

International Instruments	Date Adopted¹⁰	Legally Binding?
<i>Universal Declaration of Human Rights</i>	<i>10 December 1948</i>	<i>No</i>
<i>International Covenant on Economic, Social and Cultural Rights</i>	<i>16 December 1966</i>	<i>Yes</i>
<i>International Covenant on Civil and Political Rights</i>	<i>16 December 1966</i>	<i>Yes</i>
<i>Convention on the Rights of the Child</i>	<i>2 September 1990</i>	<i>Yes</i>
<i>Convention on the Elimination of All Forms of Racial Discrimination</i>	<i>21 December 1965</i>	<i>Yes</i>
<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>	<i>18 December 1979</i>	<i>Yes</i>
<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</i>	<i>18 December 1990</i>	<i>Yes</i>
<i>Convention on the Rights of Persons with Disabilities</i>	<i>13 December 2006</i>	<i>Yes</i>
<i>Declaration on the Rights of Indigenous Peoples</i>	<i>13 September 2007</i>	<i>No</i>
<i>World Declaration on Higher Education for the Twenty-First Century: Vision and Action and the</i>	<i>9 October 1998¹¹</i>	<i>No</i>
<i>Framework for Priority Action and Change and Development of Higher Education</i>	<i>9 October 1998¹²</i>	<i>No</i>
<i>Convention against Discrimination in Education</i>	<i>14 December 1960</i>	<i>Yes</i>

Table 2.1 International Instruments Addressing the Right to Education and Higher Education

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full

¹⁰ Date adopted by UN General Assembly unless otherwise noted.

¹¹ Adopted by UNESCO and the World Conference on Higher Education.

¹² *ibid.*

development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. (United Nations General Assembly, 1966).

The right to education and its outcomes are directly considered to not only benefit the personal development of the individual, but they also promote a culture of human rights, democratic participation, and the promotion of peace for societies and nations, which ultimately, benefit the world (UNESCO, 1998). Although a global phenomenon, barriers to education, however, still remain that are much more localized and restricting, especially for selective populations. Particular barriers to accessing education (particularly at the higher education level) are discussed later in this chapter. While Tomaševski (2006) aptly highlights the global concern for the right to education in terms of its access (even if her focus is particularly on basic education), she raises the equally important discussion about the quality and content of education for marginalized populations, which is often missing from the discourse. Thornberry (1991) highlights this issue stressing that international human rights law must promote more than a minority group or indigenous person's right to education, because if their education is of the poorest quality and with the least or very limited amount of resources, then they only become further marginalized, and thus having access to such an education becomes inessential.

Higher education, in particular, has been identified to play a crucial role in socio-cultural and economic development—a phenomenon true to all nations and territories of the world. Statistics show that the economic strength of a nation is relative to its number of enrolled students in tertiary educational institutions, as well as the nearly equal or equal ratios between male and female enrollment rates in “developing countries” (UNESCO, 2004). Despite this fact, the right to higher education has been denied to many throughout the globe—whether it is due to discrimination based on classifications of race, ethnicity, political ideology, religious belief or affiliation, socioeconomic status, disability, sexual orientation, and/or gender, to name a few.

For example, in many countries, including China, the proportion of women to men decreases at each educational tier, where women comprise approximately 25% of undergraduate enrollment. The reason for this disparity has to do with the fact that “unofficially,” women are required to score higher on national entrance exams than their male counterparts, which significantly limits the number of women admitted into public higher education institutions throughout mainland China. Universities that have a higher rate of female applicants started imposing such barriers as early as 2005 when more women started competing with men for admission into higher education institutions throughout the country (Tatlow, 2012). University students—women and men—are currently protesting against such unofficial quotas and admissions policies in larger cities such as Beijing (Tatlow, 2012). Also along the lines of gender-based discrimination in higher education, over 30 universities in Iran have relatively recently adopted new policies banning women from over 77 different disciplines and fields of study, particularly in (but not limited to) the STEM fields (science, technology, engineering, and mathematics). Although there is no clear

justification behind why such policies are now in place, there are several assumptions and one has to do with a desire to curb the growing rate of women enrolled in Iranian universities, where they currently comprise more than 60% of the overall student body or the fact that certain sectors, such as the oil industry, for example, claim there is no “demand” (or “place”) for women in such fields (Sahraei, 2012). While it is clear that the policies targeting university women students in Iran are not necessarily in regards to *access to universities* which *is* the case in China, these practices still reflect an attempt by higher education institutions to limit women’s *access to academic programs* of their choice at these respective institutions. These are examples of systematic discrimination, while some might contend they are simply examples of affirmative action, but even international human rights law (i.e., CEDAW) would not condone such strategies that marginalize women from accessing higher education in any shape or form.

In the United States, admission requirements for most universities include an established minimum for scores on standardized entrance exams such as the Scholastic Aptitude Test I (SAT I) or the American College Test (ACT), despite the fact that these exams have been often identified by critics as being culturally-specific and favoring students who attend secondary schools that target more affluent communities and have more resources available to them (Sowell, 2001). Some U.S. HEIs have recognized the biases and shortcomings of the tests and their intended measures, and consequently, they no longer require them in their admissions requirements; approximately 850 institutions currently include the submission of SAT I or ACT scores as optional for admissions (FairTest, 2012). As a result, individuals of lower socioeconomic and underrepresented statuses are least likely to attend institutions of higher learning, because they fail to meet the “minimum

standards” of such standardized exams. However, most importantly, the schools with the most limited resources available to sufficiently provide an age appropriate education are primarily attended by students from marginalized populations of society.

The Roma and Sinti populations comprise the largest and poorest minorities, primarily residing in European countries including, Bulgaria, Romania, Croatia, Hungary, Italy, Macedonia, and parts of Western Europe. National policies are currently being challenged where Roma and Sinti students go to segregated schools throughout all of Europe; less than one percent of Roma and Sinti actually continue on to higher education (Roma Education Fund, 2004). Historically, discrimination against the Sinti and Roma actually dates back to the Nazi era between 1939 and 1945 when members of both ethnic groups were frequently targeted as victims of persecution and genocide in Europe (Hancock, 2009), so the exclusion and discrimination of Sinti and Roma is still evident today through more contemporary measures such as in their participation in the civil sector and their access to education, for example.

Like the genocide and persecution of the Sinti and Roma people in Europe, the slaughter of the Tutsis and the massacres that claimed over one million lives in Rwanda between April and July 1994 occurred due to a number of interdependent factors (Sebahara, 1998). Drafted by a group of Hutu intellectuals in 1957, the Bahutu Manifesto set the pretext for Hutu ethnic and political solidarity as well as political disenfranchisement of the Tutsis (socially-constructed dichotomous identity classifications founded upon postcolonial ideas and institutionalized racism). The Manifesto was a reaction to Belgian and German “favoritism” of the Tutsi minority during colonial rule. A total of 300,000 Tutsis were massacred in all and over 100,000 left the country. Following independence in 1962,

discrimination policies against the Tutsi were implemented in all spheres of society, denying them access to employment and limiting their enrollment in colleges and universities by imposing quotas in favor of “ethnic” and “tribal” groups (Sebahara, 1998). In 1992, when Agathe Uwilingiyimana, “a moderate Hutu,” took office as the prime minister of Rwanda, she rejected the postcolonial legislation and called for access to higher education to be based on merit alone, proposing to end the quota system that restricted Tutsi access to universities and colleges, which later led to her being severely beaten by 20 armed dissidents in her own home (Stanton, 2009). While these reports are only but a few accounts of human rights violations committed against marginalized groups that were denied an equal right to access higher education, there are countless others that are not mentioned here; and some still remain undocumented and hidden from public view. In the following sections, more cases specifically highlighting minority groups’ and indigenous peoples’ challenges in attaining equal access to higher education are introduced.

In 1998, UNESCO adopted the “World Declaration on Higher Education for the 21st Century” at the World Conference on Higher Education. Again, the Declaration’s preamble states:

Higher education has given ample proof of its viability over the centuries and of its ability to change and to induce change and progress in society. Owing to the scope and pace of change, society has become increasingly knowledge-based so that higher learning and research now act as essential components of cultural, socio-economic and environmentally sustainable development of individuals, communities and nations.

So if change and progress within a nation are believed to be directly related to the higher education of its peoples, why are some denied such a right? This question is further exacerbated by the belief among some that economic rights are distinct from human rights or that economic, cultural, and social rights flow naturally from democracy and economic growth (Office of the UN High Commissioner for Human Rights (OHCHR), 2008). For instance, at the national level, higher education is often associated with its economic benefits. Economic growth, however, does not automatically translate into an improvement of the standard of living of the most excluded and marginalized groups, unless special measures or policies are directed to those ends. If growth leads to improved resources for free and compulsory education, but there are no specific policies to ensure that persons with disabilities have physical access to schools, this would widen the gaps between sectors of the population and result in a denial of economic, social and cultural rights. Similarly, democracy alone is often insufficient to realize economic, social and cultural rights for the poorest and most marginalized. People living in poverty and at the margins of society often find it harder to get their views reflected in laws, public policies or development efforts, because they lack a voice in parliaments and ministries. This may divert attention from the most marginalized to those who are more visible and have more power and more access to decision makers in a democracy. Furthermore, how privatized HEIs are held accountable in upholding these same benefits and yielding such rights, particularly since they tend to serve the socioeconomically-advantaged segments of society in both “developed” and “developing” countries is another question that must be answered. Undoubtedly, it is not that simple, as the “benefits” of higher education are not envisaged nor agreed upon by all. The Universal Declaration of Human Rights (1948) and the Convention against Discrimination in

Education (1960) both include articles pertinent to the right of higher education,¹³ including the statement that “higher education shall be equally accessible to all on the basis of merit.” Spring (2001) believes that these same human rights documents that promote the right to equal and equitable education also pose contradictions, especially to religious leaders and parents or guardians who would like to have control over exactly what kind and quality of education their children receive. It is clear that the human rights debate is ongoing, particularly in relation to underrepresented groups, and according to some scholars, there are still a number of questions that remain unanswered. Although they may all agree that minorities and indigenous peoples have a right to education, *how* to get there is where the debate blurs. For some, access to education is sufficient; while for others, the quality and the actors involved (i.e., resources) are of greater concern, particularly among proponents of education for social change and justice.

Education for Social Justice

“Social justice” is a complex term that is often described in abstract terms. First of all, the meaning behind social justice is contentious and regularly disputed (Mayer, 2007; Rizvi, 1998; Sandretto, Lang, Schon, & Whyte, 2003; Troyna & Vincent, 1995). Many agree to disagree that the term “social justice” may imply multiple meanings at various times. Gewirtz (1998) finds that the “explicit discussion” around the implication and meaning behind social justice is far too limited and uncommon. Rizvi (1998) argues that “[social justice] does not

¹³ Universal Declaration of Human Rights, Article 18: Everyone has the right to freedom of thought, conscience and religion; Article 19: Everyone has the right to freedom of opinion and expression; Article 20(1): Everyone has the right to freedom of peaceful assembly and association; Article 23: Everyone has the right to form and to join trade unions for the protection of his interests; Article 26(1): Everyone has the right to education...higher education shall be equally accessible to all on the basis of merit; Article 26(2): Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; Article 27(1): Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and benefits.

have a single essential meaning—it is embedded within discourses that are historically constituted and that are sites of conflicting and divergent political endeavors” (p. 47). It might make sense that a scholar writing an article arguing about a need for civil liberties within “Western” democracies has a different outlook on social justice than an activist supporting Afro-Brazilian mothers from the favelas of Rio in the southwestern hemisphere, especially if the alternative sociocultural contexts are unfamiliar and unknown. In turn the experience and knowledge of the scholar differs from that of the activist (although many scholar-activists are emerging in the fields of social justice and human rights, among others). In other words, their interpretations and approaches to implementing social justice are dependent upon respective environments, the experiences borne from such environments, and the knowledge gained overall. It is evident, therefore, that social justice theory and practice can branch off into varying directions, but they can still be rooted by the understanding—when discussions of education for social justice emerge—however, that there is general consensus that social justice theories are best applied in the real world—not solely limited to “scholarly,” “academic,” or “expert”-driven publication cemeteries where research goes to “die” (Bogotch, 2000). More importantly, the name alone further implies a shared, unified foundation focused on social transformation and achieving justice. *How* it is envisioned, however, is where the discrepancies lie.

Innovators in the field of education for social change such as Julius Nyerere and Paulo Freire challenged the colonial and oppressive foundations of formal education structures and both introduced relevant actions, within their own capacities to empower and serve the needs of marginalized communities. Although Freire’s pedagogical method was non-formal and customized to illiterate adults from the agrarian sector, and Nyerere’s plan

was formal and nationalized under Tanzania's first presidential term as an independent state from British rule, they both transformed former educational systems to best serve their respective targeted populations as they saw fit, as a means of promoting development, social justice, and citizenship. McLaren and Kincheloe (2007) and Fischman (2004) address theoretical issues of critical pedagogy and social justice, which both deal more with the approach to teaching about critical theory and address inclusion. Nonetheless, they all propose approaches to education that promote the interests and well-being of marginalized and oppressed populations. Since students from peripheral communities are more likely to be vulnerable and disadvantaged when it comes to receiving or accessing an equal and equitable education of high quality, then alternatives must be sought out. Non-formal education is one such alternative. As Paulston (1980) presents, non-formal education is a form of liberation, helping oppressed populations gaining the voices to articulate their personal dilemmas for positive social change through the promotion of social movements. While non-formal education has been the primary alternative method for addressing peoples' needs, especially those from vulnerable and disadvantaged groups, it does not mean that traditional, formal education structures cannot be successful in serving disadvantaged groups (Boal, 1979; Freire, 1970). As a matter of fact, one alternative method that has been quite successful within several countries in advancing the education of underrepresented populations is distance education or online learning, where a combination of both formal and non-formal structures are in place, especially at the tertiary level and for non-tertiary-level adult learners (Vrasidas et al., 2009).

While the literature on issues of diversity, equality, equity, rights, and social justice in education is quite extensive, it is dominated by contexts within North America and Western

Europe. This limitation leaves little to no understanding of how global phenomena related to such issues can be comparable, especially in the national and global contexts of vulnerable populations. Furthermore, how such issues are considered in the development and implementation of national policies that specifically serve and promote equal and equitable rights for minority groups, indigenous peoples, and other marginalized communities (e.g., equal and equitable access to higher education) within the scope of international human rights law, is also limited in research and practice (Council of Europe, 2006). Education for social justice or social change, motivated by the desire to achieve equity and justice in education, is slowly gaining influence globally, but there is still much work to be done to capture truly “global” perspectives and voices.

Education for social change or social justice is a commonly used term in addressing education as a means of empowering individuals, promoting civic education and citizenship, democratic action and critical thinking (Ayers et al., 2009). In most cases, revolutionary praxis is associated with education for social justice—a lot of which is based on the critical works of “socialist”-like philosophers and critical thinkers such as Louis Althusser, Pierre Bourdieu, Rana Dunayevskaya, Paulo Freire, Erich Fromm, Antonio Gramsci, Ivan Illich, Herbert Marcuse, Karl Marx, and Jean-Paul Sartre, to name a few (Gibson, 1999). Education for social justice is aligned with the promotion of policies and practices that focus on improving the quality of life and learning of marginalized students, while challenging current power structures that perpetuate obstacles for disadvantaged groups (Vrasidas et al., 2009; Cochran-Smith, 2004). The education of oppressed or marginalized populations, on the other hand, is the educational instruction and practice of working with students from disadvantaged groups or marginalized communities, and it can either involve social justice as

a contextual framework or not, but in order for it to be successful, it is hoped that it would be incorporated (Gasman, Baez, & Sotello Viernes Turner, 2008).

Likewise, Bogotch (2000) argues that social justice and education should be applied harmoniously through the work of schools, professionals, educators, government officials, and academic disciplines. Bogotch's stance on social justice echoes Dewey's (1904) argument that a student's life experiences should not be separated or distinguished from what is learned in the classroom, claiming that social justice is inherently an "educational intervention" that requires "an ongoing struggle" (Bogotch, 2000, p. 2). Brennan and Naidoo (2008), on the other hand, frame the importance of social justice within the context of higher education as they address issues of access, social cohesion, meritocracy, inequality, equity, and citizenship. They find, however, that there is little room for higher education institutions to make an impact unless they reflect the social change they are expected to support in the greater society (Brennan & Naidoo, 2008). Therefore, principles underlying social justice or social change at the postsecondary level is rarely applied to the greater system of higher education or the role of the state that oversees it. Rather, most social change discourse in higher education is mostly limited to micro-level cases (i.e., university or classroom-level) rather than comparative, let alone standalone national and regional cases. An additional drawback is that the number of scholars, faculty, and staff committed to social justice at the higher education level is rather scarce, which makes it more challenging to engage in discussions of how higher education can promote social change. This gap is discussed further when the roles and impact of higher education institutions at the micro and macro levels are highlighted.

Clark (1986) highlights three main traits that contemporary higher education systems should have in place: justice, competence, and liberty; yet he stresses that justice is the most pivotal of the three values. Formal education systems such as universities have been identified as an advantageous outlet to educate and raise awareness about social justice in both theory and practice (Kai, 2009), and they are commonly found to be breeding grounds of resistance and social movements. Stromquist (2007), on the other hand, argues that formal education systems such as the university most often function to perpetuate the culture and priorities of the dominant society and/or state, rather than creating more opportunities for social change, which they are fully capable of doing provided that they have sufficient resources and a supporting, self-sustaining ideology. In the same instance, however, Stromquist (2007) also highlights, for example, how nongovernmental organizations (NGOs) advocating feminist-based work in the Dominican Republic and Peru have highly benefited from the resources and capacities of higher education institutions that were structured and shaped to promote social transformation even amidst the challenging forces posed by the societies from which they emerged. Thus, the capacities and potentialities of higher education are present, as long as they are meaningfully understood and fostered.

Minority and Indigenous Rights to Education

Minority rights are indeed human rights; and there are three focal areas that minority rights protections must address at the international level—survival and existence, protection of identity, and equality and non-discrimination (United Nations, 2010). Like mutual understandings of human rights and social justice, however, the definitions of minorities and their rights are somewhat ambiguous. As a matter of fact, after the League of Nations

dismantled in 1946, when all of its assets and responsibilities were transferred to the United Nations, minorities were not of any particular concern on the global scale, so there was no urgent interest in protecting their rights (let alone defining them), and the need to address the rights of indigenous peoples were not even recognized (Thornberry, 2012). Although, “[t]he vocation of the early post-1945 age was for self-determination, decolonization, and nation-building. Powerful sentiments favored the simplification of identities; indigenous peoples were subject to similar attempts to ‘write them out of the script’” (Thornberry, 2012, p. 1). Furthermore, minorities were first mentioned in the 1960 Convention Against Discrimination in Education (CADE), it was not until the International Covenant on Civil and Political Rights (ICCPR)—adopted by the UN General Assembly in 1966—that the protection of minorities was mandated and adopted by the UN General Assembly; and even then, Article 27 of the ICCPR used language that limited this protection specifically to minority groups classified by ethnic, religious or linguistic terms. Therefore, minority groups identifiable by characteristics such as gender, sex, socioeconomic status, ability, age, marital status, nationality/citizenship, or political affiliation are most often left unaccounted for under this particular definition. Indigenous peoples, on the other hand, were not formally addressed in an international treaty until more than 20 years later. The 1989 Convention Concerning Indigenous and Tribal Peoples (No. 169) was the first binding instrument that specifically (and exclusively) highlighted the need to protect indigenous peoples. In many cases, indigenous peoples are lumped into the same category as “minorities” (more on the definitions and perspectives of indigenous peoples and minorities is covered in chapter 4). Incidentally, while some international covenants and conventions exist that are specific to minority groups and/or indigenous peoples (see Table 2.2), most references to these

marginalized populations are too broad and generalized within international human rights (Sigler, 1979). Minority Rights Group International's (MRG) definition of minorities introduced in chapter 1 is far more detailed compared to most "international" definitions, but it still leaves room for loopholes in overlooking or disregarding specific minority groups. MRG identifies minorities as belonging to ethnic, religious, or linguistic groups that are not "dominant" within society, while introducing another layer of characteristics, which may add "further marginalization"—disability, sex/gender, and so on, thus implying that these characteristics are only secondary, while in some states, they serve as the primary basis for discrimination. In other words, a woman might not necessarily be considered or identified as "minority" (at the state-level) unless she is also indigenous or belonging to another ethnic, religious, or linguistic minority group; the intersectionalities of marginalization, therefore, are sometimes forgotten or overlooked in international human rights discourses (which is exactly why exclusive treaties were established for women, persons with disabilities, indigenous peoples, and minorities, for example). Although the ambiguity of the term minority may seem to be a contradiction with the adoption of international agreements addressing women and indigenous peoples, for example, at the international level, a common agreement of the term *minority* has yet to be established, so this study applies a broader definition of the term where marginalized and disadvantaged groups are oppressed by the state and/or majority population in the society, where the minority groups in question are comprised of either ethnic or racial, national, linguistic, and/or religious identities.

The dominance and oppression of ethnic/racial identities are derived from dichotomous notions of *public* and *private* spheres of society, whereby the "ethnic nation-state incorporates ethnic and similar ascriptive characteristics into the very foundation of its

public existence; consequently, it publicly recognizes one ethnic identity while deliberately excluding (often forcibly) any others which might exist within its jurisdiction”; and although international human rights law focuses on a notion of “universal humanity,” which endorses the inherent equality and dignity of all, the concept still appears to disregard or overlook the many ethnic and cultural distinctions that exist among peoples and groups even if the universality of humankind is valued (Jackson Preece, 2005, p. 174). In cases where diversity is unfavorable, ethnic or racial minorities not only become victimized by human rights violations, but they also suffer the loss of specific rights that are unique and meaningful or significant to their ethnic or cultural roots—the loss of a highly valued identity; the loss of membership to a particular community that affirms and recognizes said identity; the loss of place or “home,” where that particular community resides; and the loss of “meaningful belonging” (Jackson Preece, 2005). Political theorists such as Kymlicka (1995), Raz (1990), and Shklar (1990) propose the establishment of a multiculturalist citizenship within a pluralist society that ensures ethnic or racial minorities can reside under the full and equal protection of the law, because “the main premise is that ethnic minorities who are recognized and supported by the state, and by extension international society, are far less likely to challenge existing modes of authority” (Jackson Preece, 2005, p. 175).

Similar to understanding the identity of ethnic/racial minorities, linguistic minorities are best understood within the context of nationalism “in which language is central to the construction of the nation” (Heller, 2006). Not only has language been essential to nation-building, but it has also consequently led to the formation of minority groups. Heller (2006) claims that language has been pivotal to nation-building in two ways—by establishing unity and by legitimizing the nation. Speaking a shared language enables diverse people and

communities to also share values and practices based on this common language.

Furthermore, by having a shared language allows a group to legitimately constitute a nation. This is not to imply that nation-building is solely reliable on the development of a language; it just means that language contributes to the affirmation of a “national” identity for a group. This point is especially important in the case of linguistic minority groups, because on the one hand, they exist due to the nationalisms that also exclude them and deny them their rights (Heller, 2006), but on the other hand, minorities can use their “linguistic nationalism” to empower themselves and challenge the power of the majority, such as the language revitalization movements that began in the 1960s in Europe and North America and the nation-building movements in the late nineteenth and early twentieth centuries in Western and Eastern Europe, respectively (Habyarimana, Humphreys, Posner, Weinstein, Rosecrance, Stein, & Muller, 2008) . Linguistic minorities are not only unique to the Northwestern hemisphere, however, and it is essential to also acknowledge that linguistic minorities—including indigenous peoples—through most parts of the world have or are currently experiencing threats to linguistic preservation and identity. Henrard’s (2001) analysis highlights the definition of a linguistic minority within the diverse South African context, critiquing the divergence that exists between linguistic minorities’ rights in theory and application. Likewise, Schlyter (2001) covers the language policies and strategies of five newly-independent countries in Central Asia with regard to a need to improve language proficiency within the various institutions of the state. Day (1985) sheds light on the circumstance of “linguistic genocide” that occurs as a result of cultural contact and interaction between two unequal societies. The phenomenon of a dying or decaying language may be attributed to a number of factors, such as the link between language and social

change, whereby changes in society reflect changes in the linguistic needs of a group's members or some languages evolve over time, and even transform into different languages (Day, 1985). Despite the various causes for the evolution or transformation of language, intentional "linguistic death" is due to a conflict between dominant and marginalized populations, in which "an extreme case of language contact with the victorious language slowly replac[es] the dying language (Day, 1985, p. 163). Just as is the case for ethnic/racial minorities, therefore, "the central role that language plays in terms of identity, opportunity and allegiance has long been recognized" (de Varennes & Murray, 2001, p. 56), which is even more reason as to why securing and ensuring the protection of linguistic minorities is equally important.

Identities that are not necessarily ascribed or confined to nationhood or language, religious minorities experience unique circumstances. Rarely are the rights of religious minorities understood, especially since religion is often perceived to be confined to the self and/or a community of believers (Jackson Preece, 2005). However, it is clear that in many instances, religion not only surpasses an individual's relationship with the divine, but it also involves human relations between both believers and other members outside of a particular religious community (Jackson Preece, 2005). Religion is among the oldest sources of collective identity and belonging among human civilization. Archaeological findings indicate that religion played a pivotal role in both organizing and legitimizing human communities throughout history and across cultures. Evident examples can be traced back to the lifestyle norms and standards of ancient civilizations—Assyrians, Aztecs, Egyptians, Hebrews, Mayans, Persians, and Tibetans, among others (Wuthnow, 1998). It is also evident that religious differences around the globe, such as in the former Yugoslavia, Lebanon, Israel,

Occupied Palestinian Territories (Palestine), Tibet, Nigeria, or Sudan, for example, are identifiable sources of discord and contention. Even Huntington (1997), in his book, *The Clash of Civilizations*, states that “revitalization of religion throughout much of the world is reinforcing these cultural differences” (p. 28). Religious belief is something so defining for individuals and larger religious communities so much that it defines people’s values, identities, and actions. The European Court of Human Rights recognized that “religion is one of the most vital elements that go to make up the identity of believers and their conception of life” (Evans, 1997, p. 283). Although the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) defines the rights of various minority groups in general terms, religious minorities are unique in that their identities are both individualistic as well as collective, and the dilemma arises when the political community and religious community are in contention. Consequently, in many states, the separation between religion and politics is not always an optimal solution, and this is apparent in several sectors of society such as in education-related policy and legislation.

When it comes down to the education sector, minorities, indigenous peoples, girls, women, persons with disabilities, the poor, and other underserved and marginalized groups, face the greatest challenges in receiving equal treatment and access to education that meets their respective needs. Minorities rarely gain access to education (especially at the higher levels), and when they do have access, it is usually of the poorest quality (MRG, 2009; Thornberry, 1991; Tomaševski, 2006). Under the international human rights law framework, minority rights and indigenous rights, including the right to education, are also protected under international law. There are protections and mechanisms in place for minorities and indigenous peoples to claim their rights to education (Pentassuglia, 2002). Despite the

potential avenues minority groups can take to ensure their rights to education, Thornberry (1991) stresses that when considering minorities, “it is not the provision of a general right to education that is important but *what kind of education*, bearing in mind that ‘education’ can destroy a culture as well as protect it” (emphasis added, p. 366). For the most part, though, international monitoring does not extend to factors such as educational content or curricula. Rehman (2000) adds that an equal education may not be “equal” at all, especially if it means that a free, compulsory education is dependent upon a minority or indigenous group’s knowledge and use of the language of the majority/dominant group in educational institutions. Currently, there are no international laws in place that account for these relevant concerns, which will most likely further aggravate existing problems for minority groups (e.g., identity crisis, poverty, and marginalization). In December 2008, the First United Nations Forum on Minorities and the Right to Education was held in Geneva, where over 400 participants attended, including UN member-states, minority education experts, and NGOs. It is clear, then, that the international arena has recently taken more of an interest in the minority case, and it is possible that future developments may yield positive results to address the current gaps within the international indigenous and minority rights framework. Table 2.2 includes a list of important international instruments that address the protection, rights, and security of minority groups and indigenous peoples.

Critical Discourses and Perspectives

As mentioned earlier, proponents of international human rights law believe that all human beings equally share an inherent dignity and protection of rights as members of one human race (Perry, 2005). Critics and opponents of “Western”-motivated notions of

Table 2.2 International Instruments Addressing the Educational Rights of Minority Groups

International & Normative Minority Rights Instruments Addressing Education	Date Adopted	Legally-Binding?
<i>UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities</i>	<i>18 December 1992</i>	<i>No</i>
<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	<i>13 September 2007</i>	<i>No</i>
<i>Convention (No. 169) concerning Indigenous and Tribal Peoples</i>	<i>27 June 1989</i>	<i>Yes</i>
<i>Document of the Copenhagen meeting of the conference on the human dimension of the Conference on Security and Co-operation in Europe (CSCE)</i>	<i>26 January 1990</i>	<i>No</i>
<i>European Charter for Regional or Minority Languages</i>	<i>5 November 1992</i>	<i>Yes¹⁴</i>
<i>Framework Convention for the Protection of National Minorities</i>	<i>1 February 1995</i>	<i>Yes¹⁵</i>
<i>UNESCO Universal Declaration on Cultural Diversity</i>	<i>2 November 2001</i>	<i>No</i>
<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	<i>21 December 1965</i>	<i>Yes</i>
<i>International Covenant on Economic, Social and Cultural Rights - Article 1</i>	<i>16 December 1966</i>	<i>Yes</i>
<i>Convention on the Rights of the Child - Articles 17 and 30</i>	<i>20 November 1989</i>	<i>Yes</i>
<i>International Covenant on Civil and Political Rights - Article 27</i>	<i>16 December 1966</i>	<i>Yes</i>

¹⁴ Legally-binding in the Council of Europe.

¹⁵ *ibid.*

“universal” or “international human rights,” on the other hand, contend that cultural, economic, political, and social differences (and hence interpretations/perspectives) of human rights must be respected and acknowledged, also asking questions such as *whose* human rights and for *whom*? (Barreto, 2013; Mignolo, 2009; Twining, 2013; Waltz, 2001). While international human rights frameworks have yet to be effectively enforced and implemented in both formal and non-formal educational settings, specifically in protecting the rights of minorities and indigenous peoples and their right to accessing quality education, alternative critical views have been explored that are often reliant on postcolonial or decolonial thought, race and ethnic studies, and gender studies, for example. Many critical theorists have come to the forefront promulgating the importance of addressing oppression of the individual, the community, and society in order to emancipate people of oppression occurring across all three levels.

Critical discourse studies and critical theories, therefore, offer alternative perspectives that often challenge the dominant ways of thinking and doing.

“In mainstream (critical) discourse analysis/studies,” Shi-xu (2007) claims:

discourse is usually understood as a linguistic, meaningful activity that is different in kind from, though casually related to, context, the elements of which are largely of Western origin and orientation anyway, are presented as more or less universally applicable, implicitly or explicitly (p. 3).

Also, the critical discourse perspective helps conceptualize the diversity of cultures within “human rights, the value of democracy, the principles of freedom and equality, and the value of human dignity,” for instance (Maier, 2007, pp. 17-18). Regarding the dominance of

“Western” ways of knowing within these spaces, Maier argues “one should not assume that these principles, values, or norms are universally shared in their concrete application and in their reciprocal relations,” because they

have been mainly elaborated in the West, and as the affirmation of cultural identities has been realized in a context of Western domination, one has to be very careful to consider the particular Western application of these—in principle—respectable norms, values, and principles as being universally valid (p. 18).

Similarly, especially regarding human rights discourses, Barreto (2013) demands the need for “decolonizing human rights” through decolonial theoretical discourse—founded in Latin America (according to Barreto), which “could be seen as an aspect in the wider need to decolonize knowledge—throughout the humanities and social sciences—both as an intellectual and political standpoint of the Third World” (p. 4).¹⁶ Furthermore, Barreto, argues, utilizing such a critical approach to human rights discourse “can be so that human rights continue to be a hindrance to imperial projects today and in the future” (p. 4). Mignolo (2009) echoes Barreto’s claims, conveying, “The future demands thinking beyond the Greeks and Eurocentrism” and a “radical reconceptualization of the human rights paradigm” (p. 49). While the application of decolonial discourses and theories is highly encouraged in countering dominant perspectives and voices, these arguments do not support human rights as a possibility for all, but rather as a transformed resistance movement. No direct references to the language and content of international human rights discourses (i.e.,

¹⁶ Decolonial studies or theory is sometimes substituted for postcolonial studies, but some decolonial theorists adamantly oppose likening the two approaches, as decolonial theory is named as such to deviate that although events of colonialism were historical phenomena, its remnants remain, and therefore, we are not yet *past* (“post”) colonialism.

instruments) are made by these scholars, so their arguments appear unfounded, especially if alternatives for defining human rights are not introduced nor explored. Ironically, Shi-xu (2007) also argues that there is a greater need of discourses from the “non-Western Third and Fourth World countries”—labels that have undoubtedly been inspired by “First World” ideas that these scholars claim to be protesting. An unyielding foundation shared across various disciplines of critical discourse, however, is the belief that critical discourse, and theories, for that matter, involve an “intimate” relationship between power and identity (Maier, 2007)—a relationship that is significantly pertinent to discourse spaces addressing minority and indigenous peoples and their rights.

Kymlicka (1995) offers an interesting liberal perspective on minority rights within “Western democracies”:

Given the spread of standardized education, the high demands for literacy in work, and widespread interaction with government agencies, any language which is not a public language becomes so marginalized that it is only likely to survive amongst a small elite or in a ritualized form, not as a living and developing language underlying a flourishing culture. (p. 78).

Similar to Thornberry’s (1991) argument, Kymlicka stresses that traditional formal education structures have the potential to further threaten and marginalize people from underrepresented groups. He also acknowledges, however, that minority groups have the capacity and potential for marginalizing themselves as well. For instance, there are some patriarchal and matriarchal minority and indigenous groups that prohibit girls and women from pursuing an education (Kymlicka, 1995; Ng, Staton, & Scane, 1995), thus perpetuating

the cycle of oppression against minorities within broader minority and indigenous populations (e.g., indigenous women with disabilities).

Some feminist theories, on the other hand, shed unique perspectives on indigenous and minority experiences and responses to the education system. Educational institutions are identified as patriarchal in nature and founded upon the ideals of white or “Western” men (Ng et al., 1995). It is understood that “[i]f minority students wish to compete and excel in this [educational] system, they must learn to internalize the standpoint and code of the ‘culture of power’ and operate within it” (p. 148). This notion is similar to Frantz Fanon’s (1967) argument that colonialism is internalized by the “black man,” who adopts an inferiority complex to the “white man,” thus even emulating his habits and oppression. This behavior, Fanon asserts, is attributed to upwardly mobile and educated black men who study and master the language of the colonizer. A main outlier, however, is that Fanon’s reference to the racially-oppressed is universally male, leaving an invisible trace of disparities and similarities across gender lines (Bergner, 1995). In most cultural and global contexts, women and girls belonging to minority and/or indigenous groups face greater challenges in achieving educational rights, including both accessing education compared to their male counterparts and even being treated equitably and equally in the classroom (aside from the greater societal obstacles that are often faced outside of educational institutions) (MRG, 2009). In other words, education systems should not be expected to change in order to accommodate marginalized groups, rather the role of the minority or indigenous student is to conform to the structure that already exists and work within it (rather than against it, even if it manages to further marginalize them). This concept is equivalent to, for instance, requiring that women adopt patriarchal postures in order to “succeed.” A major critique of

feminist theory, however, is that it is often dominated by white women's voices, particularly those from the Northwestern hemisphere, who often fail to recognize and include the unique experiences and voices of women from underserved and marginalized communities, such as minority groups and indigenous peoples (Ang, 1995; bell hooks, 2000; Mohanty, 1986; Narayan & Harding, 2000; Sandoval, 1991, Smith, 2005). Proponents of political, global, and transnational feminism argue that issues relevant to the development and implementation of new formal and non-formal education structures and the sustainability of existing policies, structures, curricula, and pedagogy should be revisited in order to address and include diverse, multicultural experiences of marginalized populations that are frequently overlooked within international discourses on education (MRG, 2009).

Rezai-Rashti (1995) proposes two specific education strategies for educators to help them challenge the dominant, oppressive systems minority groups face—multicultural education and anti-racist education, where teachers are encouraged to teach critically and introduce pedagogy and curricula that are intercultural and pluralistic in nature. As a challenge to critical theorists, Rezai-Rashti (1995) emphasizes the need for transforming the educational experience of underserved populations by arguing for the reform of current education policies, as well as the introduction of new policies into practice.

The Role of the Academic Institution

Behind every formal educational institution, there are underlying values and a philosophy of some kind by which the production and delivery of education is based. Additionally, the overall goals and objectives of any educational system determine exactly what such a philosophy is in the first place. Ideally, it is assumed (or expected) that these beliefs are commonly held by everyone working within the institution, as well as all other

stakeholders involved—administrators, faculty, students, and staff. Michael Apple (2004) observes, “one of the ways schools are used for hegemonic purposes is in their teaching of cultural and economic values and dispositions that are supposedly ‘shared by all’” (p. 59). He argues that schools, in reality, however, are built to preserve the culture of the “most powerful segment of the population” (p. 59). Although, Apple (2004) explicitly attributes this phenomenon to American schools, it may apply to any school globally. If the higher education institutions are microcosmic models of the minority *elite* of society, then surely, the underserved minority population is not represented equitably or appropriately—in many cases, not at all. Some may question, therefore, how this impacts the education of minority and indigenous populations within these very same institutions. There are also schools, however, that do assume that the foundational principles of the institution are shared among staff and students alike and that minority and indigenous voices are taken into consideration.

Firkatian (2009) references Buchvarov’s concept of “inherited iconography,” more specifically “a collection of symbols, beliefs, images, and ideas that exert a powerful attractive force for the society’s members” (p. 181). Therefore, some may argue that the “modes of domination” (Bourdieu, 1977) are systematically in place within higher education governance structures. This power of the academic institution is similar to Gramsci’s notion that the preservation and production of knowledge within institutions is controlled by a greater segment of society that would like to maintain ideological dominance (Bates, 1975). Likewise, Dewey (1916) points out, “some portions of the whole social group will find their [educational] aims determined by an external dictation; their aims will not arise from the free growth of their own experience, and their nominal aims will be means to more ulterior ends of others rather than truly their own” (p. 117).

For several radical political leaders, however, higher education institutions helped them challenge and resist colonial and imperialist dominance in country X, Y, and Z, respectively. Julius “Mwalimu” Nyerere, for example, utilized education systems and universities in particular to promote Tanzanian nationalism and self-sufficiency, so they were active in transforming the development of the country. Social movements, especially those intended to serve and educate marginalized and disadvantaged groups are unique opportunities to help empower and strengthen communities that are oppressed by the state. After reflecting on the education initiatives of street children in Brazil, Dewees and Klees (1995) address and recognize the significant role of social movements in how they can possibly be the “only viable means of generating the power necessary to pressure the state into enacting progressive social change” albeit as challenging as it might be (pp. 99-100). Social movements, they argue, are effective as long as they are fully capable of building up the strength and “power” to promote change (Dewees & Klees, 1995). While social movements supported by higher education institutions have known to be quite effective, they most often function at the macro-level, are grounded within contentious motivations, and result in temporary or short-term “solutions” (Davis, McAdam, Scott, & Zald, 2005; McAdam, Tarrow, & Tilly, 2001; McAdam, McCarthy, & Zald, 1996). Higher education institutions have the potential to serve as feasible channels and instruments in order to effect such change, but such change must begin internally, within higher education institutions and systems, themselves, if society is to benefit as well.

Higher Education for Social Change

For the most part, notions of social change within the context of higher education might bring to mind “familiar” images of student protests, activism, and campaigning on

university and college campuses; and it is true that higher education institutions have historically served and currently still function as venues for both catalysts and deterrents to social change and activism in many parts of the globe. In South Africa, between 1948 and 1994, faculty and students from predominantly black segregated postsecondary institutions (many of whom were associated with the *black consciousness* philosophy) played vital roles in mass mobilization resistance against the apartheid socio-political order (Fiske & Ladd, 2004). Similarly, between 1971 and 1972, students at the American University of Beirut in Lebanon went on strike, occupied campus buildings (as well as the Ministry of Education), and clashed with “rightist” students and police in response to a 10% tuition fee increase announced by university administration (Farsoun, 1973). While universities and colleges still create spaces for such mobilization and momentum to take shape, the idea of higher education institutions functioning in order to promote social change is taking on an entirely new meaning today, especially worldwide.

In the recent *Higher Education in the World Report 5: Knowledge, Engagement and Higher Education: Contributing to Social Change*, the Global University Network for Innovation (GUNi) (2014) and 76 authors from around the globe introduce a “vision for a renewed and socially responsible relationship” between higher education, knowledge, and society. The report has a dual purpose: 1) to analyze the evolution of understanding about “who the agents of knowledge creation are and how the creation, distribution and use of knowledge are linked to our aspirations for a better world”; and 2) to provide visibility as well as “critically examine one of the most significant trends in higher education over the past 10–15 years: the growth of the theory and practice of engagement as a key feature in the evolution of higher education” (p. 1). The advantages of promoting diversity, equitable access, and indigenous

knowledge are also highlighted as effective strategies in identifying the role of inclusion in higher education for social change.

Unfortunately, however, the connection between higher education and social change still has diverging implications for some researchers and scholars in the field. Green and Renton (2009) propose alternative models to the interdependent relationship between higher education institutions and the state so that universities can become less “dependent” in order to allow university administrations more autonomy in working to advocate “social change” in society, especially as it relates to funding and governance. However, university accountability and transparency should not be compromised in the process. Most studies connecting higher education to society focus solely on industry or economic-driven relationships (Cochrane & Williams, 2010). As academic institutions are developing their own identities, however, social change has taken on a more “wholesome” meaning, whereby higher education institutions are finally gaining recognition as instruments (not solely as *venues*) for social change. Brennan, King, and Lebeau (2004) studied higher education institutions within transitional societies such as Central and Eastern Europe, as well as post-apartheid South Africa, and they found that

the governments who are funding generally expanding higher education systems and the international bodies encouraging them to do so are, on the whole, not doing it because of a belief in the intrinsic good of education. They have more instrumental purposes to do with economic development, social cohesion, national identity and so on (p. 58).

So even in the findings of Brennan et al. (2004), States appear to be distinguishing the social benefits of higher education from socioeconomic development and citizenship within local

communities and the greater society. Through the analysis of historical findings, Silver (2007) also discovers that the relationships between higher education institutions and local and regional communities have been strengthened through economic ties while overlooking the *social* benefits. Even in developing countries, the establishment and progress of universities are based on internal factors such as university-government relationships, establishing autonomy, addressing accountability, supporting academic staff in new roles and positions, and managing expansion while preserving equity, raising quality, and controlling costs (Chapman & Austin, 2002). The capacities and capabilities of higher education institutions are often taken for granted, as well as the right to higher education. Lucas (1970) reminds us of the initial purpose of higher education institutions that served elite classes as opportunities of “privilege,” but now that the number of higher education institutions has multiplied and become more accessible for many (mostly socioeconomically advantaged populations due to the expansion of costly, privatized colleges and universities), this transition may potentially lead one to pose the question “What about the *right* to higher education?” What about *all* rights?

Underrepresented Groups in Higher Education

Across the board, statistics have indicated that minority populations are largely underrepresented within higher levels of education. At the postsecondary level, the discrepancy between the dominant society and its marginalized or underserved populations can sometimes appear to be so great. Higher education institutions can be notably “homogeneous,” and consequently, they are sometimes characteristic of having cultural disconnects between students from underrepresented groups and the institutions (Enger, 2006). Although Enger’s remarks are specific to colleges and universities in the U.S., it is

also believed that such gaps exist within other universities around the world as well, particularly where there are clear divisions and/or tensions between majority and minority populations within societies. Altbach (1998) finds that university students in the “developing world” (although true of the “developed world” as well) are considered to be the most affluent and “elite,” not necessarily representing the heterogeneity of a respective country’s population, thus further widening the gap between the rich and poor communities. In transitional and developing countries, most university students represent urban populations whereas the countries themselves are predominantly rural, where more than a quarter of the world’s illiterate minority and/or indigenous population resides (Curtis, 2009).¹⁷ Higher education institutions become highly centralized and concentrated within highly-populated urban areas, where most of the sparsely distributed peoples from minority and indigenous communities residing in rural areas will be unable to access them due to the interwoven historical, socioeconomic, political, and cultural factors of the landscape in which they were established. Therefore, it is evidently clear that indigenous and minority populations have not even begun to reach an equivalent level of education or affluence to gain equal access to postsecondary education. The primary focus here is to address the needs of marginalized and oppressed populations—those that are often isolated and settled along

¹⁷ In most rural regions, the illiterate population is significantly higher. In China, for instance, national statistics from 2000 indicated that out of the 87 million illiterate adults in the country, nearly 40 percent live in mainly rural, western areas, where minorities account for the highest proportion of the population and where the illiteracy rate is the highest in the country (Curtis, 2009). Although UN agencies working on education do not have any statistics highlighting the percentage of minority and indigenous populations that comprise the over 101 million illiterate children in the world, evidence suggests that it is somewhere between 50 and 70 percent. By 2015, the UN projects that there will be approximately 700 million adults in the world who still will not be able to read or write. If the percentage of illiterate adults and children from minority and indigenous populations is so significantly high, then it is clear that this proportion of the world’s population will not access any institutions of higher learning (let alone formal education at the primary or secondary levels).

the periphery of society, unable to access equal and equitable resources due to discriminating practices, policies, and laws that are either directly or indirectly debilitating and further marginalizing them. When considering what particular approach is most suitable in the educational instruction of populations that have been oppressed or marginalized, it is best to first know and understand the backgrounds of these intended recipients of such formal education. Of course additional factors should be taken into consideration (i.e., instructor expertise, environment, resources available), but ultimately the needs of the target population should drive the research.

Minorities and Indigenous Peoples' Unequal Access to Higher Education

Compared to their majority counterparts, individuals belonging to minority groups and indigenous communities are less likely to attend and graduate from institutions of higher learning compared to their majority counterparts, and this discrepancy is due to a number of interconnected factors. It is important to highlight, however, that the various barriers to accessing higher education that minority groups and indigenous peoples face vary from state to state. Unjust discrimination against minority groups and indigenous peoples is conducted in a number of forms, but the acts of discrimination are commonly founded upon prejudices against a particular national, ethnic, linguistic, religious, or indigenous group. As mentioned earlier, women and girls from minority and indigenous communities, in particular, face greater challenges in gaining equitable and equal access to education and continuing on to higher levels of education, “especially in highly patriarchal family and community structures” (Office of the High Commissioner for Human Rights, 2012). Factors that contribute to the very low rate of minority groups and indigenous peoples accessing universities and colleges have much to do with several factors that are already marginalizing them culturally,

economically, historically, politically, and/or socially. Table 2.3 below includes some common barriers that marginalized populations face in accessing education at any level.

In addition to addressing specific factors presented in the table above, which may contribute to the educational discrimination (via the purposeful denial of access) of marginalized peoples, Sayed (2009) also states that such discrimination against minorities and indigenous peoples who are excluded from education and further marginalized must be addressed by overcoming three specific obstacles—ensuring *physical access* to education, as individuals from some minority groups and indigenous communities are denied physical access to education across all levels. A second hurdle is ensuring *quality* education when marginalized peoples do have physical access to schools, especially since when most students from underrepresented groups finally gain access to education, it is most often of poor quality, which creates various challenges for the students. If “[t]he quality of the educational experience has a crucial effect on the demand for and completion of primary education” (Sayed, 2009, p. 25), then clearly this affects advancement and matriculation to secondary and tertiary education as well; and the rate of retention as well as the progression to higher levels of education will continue to decrease for many members of these communities as they recognize that services offered by educational institutions do not meet their respective needs and are both alienating and exclusionary. The third and final challenge is specific to when individuals from minority and indigenous groups complete their education. After completing their formal education, marginalized groups discover the advantages they have to participating in the labor market as well as how their educational credentials influence their social status. In many cases, however, minorities or indigenous peoples are still underrepresented in many key positions within society. In the U.K., for instance, there are

very few (if any) minority ethnic staff working in senior civil service positions; clusters of staff from minority populations are often found working at lower levels of employment. Universities in the U.K. also fail to wholly represent the minority ethnic members of society (Sayed, 2009).

Table 2.3: Barriers and Bridges for Minorities and Indigenous Peoples to Access Higher Education

Conflict	<i>Due to the aftermath of war or conflict, members belonging to minority groups often become mentally and physically disabled, orphans, refugees or internally displaced people.</i>	
Culture	<i>Some cultural traditions and customs held and practiced by peoples and groups promote and foster socialized behaviors and beliefs that lead to inequality and inequity that often result in preventing and/or creating barriers to education (e.g., gender-based stereotypes nurtured by patriarchal customs).</i>	
Disability	<i>Disabled children and adults have limited access to educational facilities, learning equipment and educators who are trained to teach them. This is particularly the case in rural areas or urban slums in developing countries.</i>	
Discrimination	<i>People from a marginalized ethnicity, religion, tribe or class often experience educational exclusion due to negative social attitudes, sometimes over a long period of history. Even when they have access to education, they suffer from verbal and sexual abuse and school curricula/pedagogy do not meet their needs.</i>	
Disease	<i>People who are affected or infected by HIV/ AIDS and other illnesses diseases often become marginalized due to social stigma, poor health, or increased costs for treatment. Those who are children are also more likely to become orphans with little or no protection from violence.</i>	
Family breakdown	<i>People often leave home due to family problems. These include: family crisis, unemployment, divorce, alcoholism and substance abuse weakening family ties.</i>	
Language	<i>Most minorities and indigenous peoples are fluent/proficient in languages that are not recognized by the state and/or not spoken, learned, or taught in formal educational institutions, which further marginalizes and excludes these groups altogether.</i>	
Location	<i>Indigenous, rural or nomadic people often live in marginalized areas where access to basic facilities such as health care and education is limited. They are also less likely to be registered at birth and are more prone to poor health and low participation in education.</i>	
Poverty	<i>Coping with poverty is often addressed by partaking in some type of labor, which makes it more challenging to access school or higher levels of learning. Many marginalized people work on the streets, in hazardous places, or as sex workers due to household poverty. Such children are at risk of mental, psychological, physical and sexual abuse.</i>	
		<ul style="list-style-type: none"> ◆ <i>Special admissions policies</i> ◆ <i>Reservation schemes</i> ◆ <i>Scholarship, bursaries, or stipends</i> ◆ <i>Reduce or eliminate direct costs of schooling</i> ◆ <i>Grants (conditional, unconditional, cash and in-kind)</i> ◆ <i>Native language instructors and relevant culturally-sensitive curricula and pedagogical approaches</i> ◆ <i>Indigenous and minority-serving institutions</i>

Although such barriers have historically and currently still do exist, there are avenues that can be taken both at the grassroots and policy levels. Petherbridge-Hernández (1990) analyzes the case of the underground instruction of Catalan (language) over a 30-year period in Catalonia through Paulston's framework for "liberating non-formal education." She found that the linguistic education of Catalan was quite effective in promoting strong, collective social movements among minority and indigenous populations in Europe and North America, later changing educational policies in Spain regarding language instruction, and thus making way for the inclusion of Catalan. Though minority groups have faced either systematic or unmethodical barriers to accessing higher education over long periods of time, steps are being taken to address this global problem. Examples of such actions taken to promote minority group access to higher education include the establishment and implementation of affirmative action and/or quota systems, desegregation plans, inclusion strategies, minority-serving institutions, indigenous knowledge applications in contemporary policy, distance education or online learning, and the emergence of more universities and colleges throughout the country due to the growing trend of privatized, low-quality higher education institutions.

Studies have further indicated that granting minority populations access to higher education yields results and policies that are not only beneficial to the individual student, but to the greater society as well. In several countries, it has been proven that having a mother with secondary or higher education reduces the rate of child mortality by more than 50% (MRG, 2009). Over time, state governments and universities have been gradually realizing the importance of granting access to postsecondary education institutions available to all, including marginalized populations. In Northern Ireland, the conflict between Protestants

and Catholics was reconciled, in part, due to a greater influx of Catholic students being admitted into universities (Curtis, 2009). It was not until 2007 that the Spanish government publicly announced in the Segovia Declaration of Nomadic and Transhumant Pastoralists that all nomadic communities have the right of equal access to higher education. Consequently, relations between Spain's education ministry and its rural populations have been strengthened, yielding mutual benefits for nomadic and pastoral citizens as well as the state's economy (MRG, 2009).

Measures to Address Systemic Barriers: Affirmative Action and Quota Systems

The United Nations guidelines on international standards regarding the implementation of minority rights include that

[d]ifferential treatment may be permissible if its objective is to overcome past discrimination or address persisting inequalities. In fact, international human rights law provides for the adoption of special measures in favor of certain persons or groups for the purpose of eliminating discrimination and achieving full equality not only in law but also in practice (2010, p. 9).

Affirmative action or one form of "positive discrimination" policy as some may refer to it (Weisskopf, 2004) (despite the United Nations' request to avoid such terminology and alternatively opt for terms such as "positive action" (United Nations, 2010)) within higher education institutions has caused some great controversy among scholars, academics, and policymakers ever since it was first introduced within U.S. higher education systems (2003 Supreme Court decision, *Gratz v. Bollinger*, 539 US 244). Such affirmative action policies regarding admissions at universities and colleges across the country were specifically

targeting the classification of race as the primary determining factor in admitting students from minority populations. It was proposed to be a temporary solution, and it was actually introduced in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Article 2.2:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Soon afterwards, other countries followed the U.S. model of affirmative action. In 2000, the state legislature of Rio de Janeiro adopted affirmative action quota policies for two public universities in order to increase the percentage of Afro-descendants, indigenous peoples, and applicants with disabilities (Pereira, 2003), but it was not until only most recently that Brazil passed a national law requiring all public universities in the country to reserve half of their admission spots to adults from lower socioeconomic status backgrounds (Rogers, 2012).

The Sri Lankan government also implemented the policy in the 1970s in order to address the discrepancy British colonialism had created between wealthy and poor educational facilities in the country (de Silva, 1997); and in 2008, the Supreme Court of India upheld the ruling that specific “reservations” be set guaranteeing members of the “other backward class” 27% of the spaces available in public higher education institutions despite how highly debated the

quota policies have been over the past 30 years, particularly by those individuals who do not comprise any of the three groups for which the Parliament of India set reservations for—“Scheduled Castes” (SC), “Scheduled Tribes” (ST), and “Other Backward Class” (OBC) (Laskar, 2010), similar to Brazil’s newly adopted quota policy. In most Canadian universities and colleges, First Nations (indigenous peoples of Canada), aboriginal, persons with disabilities, and women are eligible for special access and exclusive scholarship opportunities once careful review is conducted of their admissions applications. In the Northwest Territories, for example, these same aforementioned four designated groups are eligible for “priority status” considerations in education and employment (Northwest Territories, 2009). Malaysia and South Africa both pose interesting affirmative action cases, where in both countries, the politically dominant groups (and numerical majority)—Bumiputera in Malaysia and Blacks in South Africa—are socioeconomically disadvantaged, thus leading to special higher education provisions set for their respective minority groups (Lee, 2010). Despite the fact that affirmative action and quota policies have a number of critics, a few States have relied on them as ideal solutions (even if temporary) to increasing the rate of minority students attending higher education institutions.

Minority-Serving Institutions

White and Dixon (2007) highlight partnerships forged between minority institutions for higher education (MIHEs) and federal agencies in the United States, ensuring that minority education is of particular concern to the state. However, there appears to be a bias on the part of the federal government that overlooks the many problems that several minority-serving institutions (MSIs) are currently facing, especially in regards to poor quality

and low graduation rates among students (Feldman, 2014). Not all MSIs in the U.S., however, were or are created equal. Some MSIs were established by the federal government, and others were grassroots initiatives developed by local stakeholders in the community who had a genuine concern for having safe spaces that maintained cultural, linguistic, ethnic, and racial relevance and coherence at the tertiary level. Bergin et al. (2007) also focus on minorities in the United States, where they analyze EXCEL, a program developed to encourage minority youth to pursue higher education after graduation from secondary school. Aside from the U.S., minority-serving institutions (MSIs) that specifically target and/or accommodate specific minority groups exist in other parts of the world. Canada, China, New Zealand, Nicaragua, and South Africa, among others, are known for establishing such higher education institutions, even though MSIs are, in the words of scholar and Spelman College¹⁸ Board of Trustees member Walter R. Allen, “a uniquely American creation” (Gasman et al., 2008, p. xv). In the United States, MSIs traditionally include tribal colleges and universities (TCUs), Historically Black Colleges and Universities (HBCUs), Hispanic-serving institutions (HSIs), and Asian-American and Pacific Islander-serving institutions (AAPIs) (McDonald, 2012). MSIs, especially for indigenous communities, are also surfacing in other parts of the world, including Australia, Canada, and New Zealand (Cole, 2011).

Established prior to 1964, historically black colleges and universities (HBCUs) pioneered the way for the establishment of minority-serving institutions in the United States—the first one being founded in 1837 in Cheyney, Pennsylvania—before slavery was

¹⁸ Founded in 1881, Spelman College is an HBCU primarily attended by women of African descent.

abolished, particularly since most free Blacks/Afro-descendants were not granted access to any other historically White institutions (HWIs) or predominantly White institutions (PWIs) that were already established in the area (Gasman et al., 2008). There are currently 103 HBCUs—public, private, four-year, and two-year—in the country (Brown II & Davis, 2001). Prior to the Civil War and even prior to the abolition of slavery, HBCUs were the only postsecondary institutions available to Black students throughout the country. It was not until 1954, when the U.S. Supreme Court ruled in the prolific *Brown v. Board of Education* case that “separate but equal schools” were unconstitutional. In addition to the 103 HBCUs, 50 predominantly Black institutions (PBIs) emerged in some parts of the U.S. before and after 1964. Predominantly Black colleges and universities are institutions with an enrollment of more than 50% Black students, which were not founded primarily for the education of persons of African descent (Brown II & Davis, 2001). Unlike HBCUs and PBIs, most tribal colleges and universities have received little attention beyond the borders of Indian Country, but despite their unprecedented growth and progress in the civil rights of Native peoples during the 1950s and 1960s, there were still comparably very few TCUs available to Native American Indian students (Guillory & Ward, 2008). Some HBCUs even admitted Native students prior to the establishment of TCUs since indigenous peoples in the U.S. were also barred from accessing PWIs and TWIs. Initially, only 15 tribal colleges were chartered by tribal governments, and over time, the number of TCUs grew to 37, but only five of them offer four-year bachelor’s degrees, and two of them offer master’s degrees. Another unique feature of TCUs is that “[a]lthough general patterns common to [their] operation . . . can be discerned, each institution molds its educational process to the community in which it exists” (Pavel, Inglebret, and Banks, 2001, p. 53). Today, all 37 TCUs are part of the

American Indian Higher Education Consortium (AIHEC), which serves the TCUs through public policy, advocacy, research, and program initiatives to “ensure strong tribal sovereignty through excellence in American Indian higher education” (AIHEC, 2015). Hispanic-serving institutions and Asian-American and Pacific Islander-serving institutions emerged in the 1990s, and they are more or less located in areas where the racial/ethnic demographic population is reflective of the majority of students enrolled at those respective MSIs. Thus, HSIs and AAPIs were not necessarily established to specifically accommodate the cultural relevance and needs of these respective populations, but rather, they evolved (over time) into having significant enrollment rates (approximately 25% or more) of Hispanic/Latino and Asian-American and/or Pacific Islander students, respectively (MacDonald, Botti, and Clark, 2007). Since the passage of the Higher Education Act of 1965,¹⁹ higher education strategies and policies targeting have been rather complicated and unsupported by U.S. federal and state governments. Consequently, the Hispanic Association of Colleges and Universities (HACU) was established in 1986. The primary role of HACU is to “unite the de facto Hispanic colleges and universities into one organization to garner political mobilization and direct strategic initiatives at a national level for Hispanic higher education” (MacDonald, Botti, and Clark, 2007, p. 492). Although Allen claims that MSIs are “uniquely American,” perhaps only the *term* “minority-serving institutions” is a U.S. invention, but the concept and establishment of such institutions is clearly evident in other parts of the world.

In South Africa, during apartheid, segregated universities for Black and Colored students were established arguably to meet the educational needs of these minority

¹⁹ Signed into law by President Lyndon B. Johnson, the Higher Education Act (HEA) of 1965 is the federal law that governs the administration of federal student aid programs at the tertiary education level.

populations, but rather, critics of apartheid believed that the Bantu Education Act 1953 and the Extension of University Education Act of 1959 were implemented to legalize aspects of apartheid, leading segregated education systems within all educational institutions to further marginalize the Afro-descendant population by funneling them into careers intended for unskilled and manual labor (Clark & Worger, 2011). Post-apartheid new higher education policies, on the other hand, were

predicated on an assiduous transformation imperative . . . [which was] was driven as much by the need to undo the iniquitous legacy of apartheid and years of white minority hegemony over the academe, as it was by a duty to re-establish higher education institutions in the post-apartheid reform milieu (Barney Pitso, 2010, p. 39).

Interestingly, minority-serving institutions based on racial/ethnic identity were not the only trend that followed with higher education reform in South Africa, as several women's colleges were established throughout the country as a national effort in order to provide more opportunities for women in academe. In Israel, several Arab universities were also created in order to address the unequal access and resources Arab minorities were experiencing in the country. Minority-serving institutions are also based upon social justice frameworks, coalition building, collective identity, and student empowerment (Gasman et al., 2008), which are key components of a social movement. Minority-serving institutions and various ways in which they emerged are one of many models in which minority groups and indigenous peoples that are excluded from accessing higher education altogether or who face obstacles that are not conducive to their needs can potentially (but not always) gain support

and access that they might not receive at postsecondary institutions that reflect ideologies of the dominant society. MSIs have the capacity to provide an overall environment of inclusiveness whereby minorities and indigenous peoples can have their individual and collective identities reaffirmed and validated by their peers, which can become quite empowering for such persons and groups that are otherwise marginalized or unacknowledged. Likewise, pedagogies, activities or events, and curricula at MSIs are usually customized to serve the populations they mainly target, particularly as they relate to language, gender, class, as well as historical, cultural, political, social, and spiritual and/or religious relevance to their identities and socialization. In addition to advantages of MSIs, there are also some challenges and limitations ascribed to them.

One of the main challenges for MSIs is maintaining economic stability and transparency. For the most part, MSIs must remain financially self-sufficient—even if some receive partial monetary support from national governments and/or private donors. An HBCU in Virginia is currently on accreditation probation for its failure to complete financial audits over two consecutive years (Reilly, 2014), and a wananga—a Māori higher education institution in New Zealand—had to cancel over 200 student qualifications and pay back \$5.9 million (\$4.6 million U.S.) to the Tertiary Education Commission after an external audit discovered that the university was overfunded for the past five years (3 News, 2014). Nearly all staff and faculty of the Bahá'í Institute for Higher Education (BIHE) in Iran are volunteers who do not receive any monetary or other form of material compensation. Although financial insecurity is not a problem suffered by all MSIs, it is a common obstacle for most of them nonetheless. Economic setbacks make MSIs susceptible to many other problems, including the lack of properly trained staff and educators, significantly low wages

or salary for university personnel, facilities and resources of poor quality, corruption and mismanagement of funds, high employee turnover, vulnerability to closure or loss of accreditation, and so on. Aside from economic relevance of admissions, MSIs are tasked with keeping enrollment numbers high and ensuring the matriculation of their students. In the U.S., competition due to the expansion of private and virtual higher education programs and institutions, as well as the incentives “elite” TWIs and PWIs are offering minorities and indigenous candidates is also contributing to an overall decline in MSI enrollment rates. It may even be argued that because they are characteristic of serving specific, underrepresented members of society, they exclude or are unwelcoming to non-minority and non-indigenous or White students.

Desegregation and Inclusion

The landmark 1954 U.S. Supreme Court decision in *Brown v. Board of Education* challenged the government’s segregation of schools into the notion of “separate but equal” on the grounds that discrimination based on race was deemed unconstitutional (Litolff, 2007). With the assistance and support of the National Association for the Advancement of Colored People (NAACP), third-grader Linda Brown, along with her family, was able to appeal the Supreme Court, which catalyzed the modern civil rights movement. Consequently, desegregation or integration has been used as an effective strategy in redistributing the ratio between minority-majority groups within institutions for purposes of achieving equity and equality, particularly within the higher education sector (as it relates to access to resources) since the mid-nineteenth century in the United States. Public and private universities and colleges in the southeastern and southern regions of the United States were among the first higher education institutions to be desegregated in the country (Kean, 2007).

Desegregation of higher education institutions is not only unique to the U.S., however. Beginning in 2005, several states across Central and Eastern Europe adopted national Roma integration strategies in order to accommodate more Roma students in traditional universities and colleges within their respective countries. For the most part, primary and secondary schools serving Roma populations are segregated from mainstream schools, and educational instruction and materials are solely offered in the Romani language; they are also characteristic of much poorer quality and have significantly less resources available to students and educators (European Roma Policy Coalition, 2012). Consequently, segregation at the lower levels has made it nearly impossible for Roma students to advance and enroll in higher education institutions in these countries.

Although some are highly critical of segregated schools, others might still question why desegregation efforts are even exerted if minority-serving institutions continue to exist and function as they do. To some, it may even seem rather paradoxical or contradictory. However, some critics of desegregation believe that in some cases, segregated learning for marginalized and oppressed populations might be more beneficial to the progress and wellbeing of members from these particular communities (Irwing, 2011). As Sayed (2009) mentioned earlier, most education systems are framed by systems and structures that often perpetuate the marginalization of marginalized populations due to a lack of sufficient or adequate knowledge in how to best serve students from a particular underrepresented group. In such cases, segregated educational facilities are more appealing and receptive to serving students from marginalized communities. In other instances, the demographics of segregated schools mirror the communities they serve. In his article “Would African-Americans Have Been Better Off Without *Brown v. Board of Education*?,” Balkin (2002) argues that school

segregation had much to do with residential segregation produced by racially discriminatory housing and real estate policies that were created by private entities and governments at state, local, and federal levels, but this could be true for any part of the world where *de facto* (“as a matter of fact”) or *de jure* (enforced by law) segregation of marginalized groups of any kind is evident.

Application of Indigenous Knowledge

Echoing the sentiments of critical discourse scholars and critical theorists, especially within decolonial theory spheres, there is a rapidly growing movement to revive and promote indigenous knowledge systems within higher education systems in order to balance, as well as challenge the more common “Western” higher education paradigms. According to UNESCO (2003),

“[l]ocal and indigenous knowledge” refers to the cumulative and complex bodies of knowledge, know-how, practices and representations that are maintained and developed by peoples with extended histories of interactions with the natural environment. These cognitive systems are part of a complex that also includes language, attachment to place, spirituality and worldview.

Although there are many different terms to identify indigenous knowledge globally (e.g., traditional ecological knowledge; ethnoscience; local knowledge, and so on), a shared concept among all forms of indigenous knowledge is the belief in the intertwining and mutual dependency of nature and culture (UNESCO, 2003).

The application of indigenous knowledge in education policy is definitely a unique and most likely, the least common approach used among the various strategies individuals, communities, organizations, and states are implementing in order to attract and better serve the needs of minority and indigenous students in higher education institutions that are traditionally white institutions (TWIs) or PWIs. However, the scarcity of utilizing this approach has to do with the fact that higher education institutions that are currently applying indigenous knowledge in their education policies and practices are very few and far between; and those that *do* apply indigenous knowledge systems are limited to serving indigenous populations within MSIs that target native and indigenous communities, and much has to do with the fact that administrators and instructors are not fully trained/ prepared and/or are quite unfamiliar with the relevance between its application, philosophy, and the subject material. Instead, TWIs and PWIs are structured and based upon what Tuhiwai Smith (2012) refers to as “colonizing knowledges,” where the processes of discovering, extracting, appropriating, and distributing knowledge becomes “organized and systematic.” Tuhiwai Smith (2012) focuses specifically on how “Western knowledge [is] . . . draw[n] down . . . into the colonized world” in order “to show the relationship between knowledge, research and then imperialism,” and how it shapes our ways of knowing (pp. 61-62). Similarly, Macedo (1999) explains:

It is only through the decolonization of our minds, if not our hearts, that we can begin to develop the necessary political clarity to reject the enslavement of a colonial discourse that creates a false dichotomy between Western and indigenous knowledge. It is through the decolonization of our minds and the development of political clarity that we cease to embrace the notion of Western versus indigenous

knowledge, so as to begin to speak of human knowledge. It is only through the decolonization of our hearts that we can begin to humanize the meaning and usefulness of indigeneity (p. xv).

Therefore, “colonizing knowledges” must be resolved by “decolonization of our minds” (and hearts) in order to remove the “otherness” associated with indigenous and native approaches to knowledge and learning.

As a means of challenging philosophies of traditional or conventional universities and colleges that are not minority-serving, there are more instances in which advocates of indigenous knowledge are calling for its use in “Western” education policies and institutions. Māori professor Hingaroa Smith (2009), who works at an indigenous university in New Zealand, has conducted a study in which he calls for an examination of “different issues related to Indigenous knowledge production within a ‘conventional’ university institution, compared with an Indigenous-tribal institution, and highlights the sites of struggle for Indigenous Knowledges scholars working within the western academy.” Efforts to integrate indigenous knowledge with contemporary approaches to education are still expanding even if at a slow pace.

Regardless of the steady rate of efforts promoting and integrating indigenous knowledge within higher education institutions, however, there has been a significant peak in knowledge-sharing and research targeting the benefits and advantages of such an approach over the past two decades. Robertson, Anning, Arbon, & Thomas (2012) explore the role of the World Indigenous Nations Higher Education Consortium (WINHEC) in promoting alternative approaches to higher education, particularly through the establishment of a co-

existing, international “Indigenous higher education entity” that simultaneously encourages “western universities to adopt a more inclusive approach within the complexities that accompany a socially demanding and culturally challenging market” (p. 11). Not only are the benefits of indigenous knowledge recognized and appreciated within indigenous communities but among non-indigenous and pluralistic communities and societies as well at the local, state, and international spheres and across extensive fields and industries as social transformation continues to become a priority. TWIs and PWIs in Canada (Kovach et. al, 2008) and New Zealand (Walker, 2000), for example, have adopted traditional knowledge systems, combined with their current “Western” higher education institution philosophies after realizing that such a reform helped increase higher education enrollment, retention, and completion rates among their indigenous/native populations. Indigenous knowledge has proven to not only contribute to the reality of unity in diversity and the advancement of society, but to the liberation and empowerment of marginalized populations, especially members of the indigenous community (Raygorodetsky, 2011).

Summary

This section introduced the integration of various theories and perspectives that frame the overall critical analysis discourse and interpretive policy analysis methodology of this study (more on the methodology is discussed in the following chapter), and this review of the literature provides a glimpse into the human rights and social justice frameworks in which the educational rights of indigenous peoples and minorities (and underrepresented groups in general) are explicitly and implicitly embedded. The international debate about identifying the *kinds* and *quality* of education most appropriate and available for indigenous peoples and minorities is still fragmented and must be revisited (Sayed, 2009; Thornberry,

1991), but it is surely gaining international attention and still proves that the protection of the educational rights of minorities and indigenous peoples are not yet refined. While international human rights law scholars and practitioners advocate for the right to education and access to higher education for such vulnerable groups and marginalized populations, they fall short of delving into the processes necessary to achieve them, as well as identifying concrete outcomes, having to do with the general structure of international human rights law—it focuses on establishing (and to an extent) enforcing human rights and holds nations accountable to focus on *how* and *why* these rights are vital to the progress of the state. In order for issues and topics germane to the educational rights of indigenous peoples and minority groups—diversity, identity, inclusion, equity, equality, relevance, quality, and access—to be fully considered, however, the discourse must go beyond what is addressed within the minimum content and language of the law. Landman's (2005) call for a need to apply a social sciences lens to analyzing human rights problems, thus highlighting the advantages and necessity of including social justice theory, where the contextual background of inequalities and inequities in education that must be studied beyond the language of the law can be studied, understood, and addressed from multiple perspectives. Without knowledge of the context of why human rights are violated, they cannot be fully understood and applied within a legal framework. Hence, a social science approach would be both conducive and imperative to successfully promoting and fostering a human rights culture.

Although international human rights law (binding and non-binding) does address the rights of indigenous peoples and minority groups within the context of education and higher education in general terms, social justice frameworks are sometimes discovered to help fill in the gaps and limitations through practical solutions that international law addresses in more

literal terms (especially for vulnerable populations like indigenous peoples and minorities).

International human rights instruments are based upon a normative framework to establish and influence policies and law. However, there is a severance between what is in writing and what is actually implemented, as human rights in action have yet to be wholly realized.

Theories focused on justice and social justice may help bridge this gap, particularly because they focus on understanding micro-level issues that aim to answer questions such as: What is preventing indigenous peoples from accessing higher education? Why do minorities in this region have such poor quality education? Why are there no indigenous women teaching at the tertiary level in X country (and so on)? If social justice and justice advocates remain focused on the principle of justice as a foundation for equal and equitable education for all, there will be no need to discuss the various definitions and implications of what social justice for education means, because the outcomes will speak for themselves.

Similar to social justice interpretations on the right to education for marginalized communities, critical studies highlight the importance of understanding the dynamics of power and oppression that perpetuate inequality and injustice. A common critique of international human rights law is that it is rooted in “Western” thought and Eurocentrism and, therefore, it marginalizes “non-Western” persons (including indigenous and minority communities) and maintains their oppression (Barreto, 2013; Mignolo, 2009; Twining, 2013; Waltz, 2001). In other words, international human rights law is another systematic strategy of perpetuating inequality, injustice, and oppression. However, the main problem with this argument is that it is mostly inaccurate, and evidence of the irrelevancy of international human rights law is not provided. Furthermore, the founding instrument—the Universal Declaration of Human Rights—was initially drafted by a commission of 18 members

comprising diverse economic, cultural, political, and religious backgrounds from states, including: Australia, Belgium, Byelorussian Soviet Socialist Republic (BSSR), Canada, Chile, Egypt, France, India, Iran, Lebanon, Panama, Philippines, Republic of China, Union of Soviet Socialist Republics (USSR), United Kingdom, United States, Uruguay, and Yugoslavia (Morsink, 1999). Whether the respective ideologies of these representatives was “Western” at the core is unclear. Representatives from 50 states participated in the final drafting of UDHR, and the progeny of international instruments that followed have involved more inclusive and relevant language, content, participation, and standards without masking the diversity of the human race with the “universality” of standards for human dignity. What most critical perspectives lack, however, is a critical analysis of how such instruments are actually interpreted and implemented into action.

Through the application of these multifaceted approaches, the value and benefits of higher education can also be truly recognized in serving *all* populations, particularly marginalized populations such as minority groups, indigenous peoples and women, as emphasized at the World Conference on Higher Education and the two mutually-reinforcing instruments adopted by UNESCO that were catalyzed by the conference. This same conference also highlighted the importance of the need for equitable access to higher education that is of high quality, thus reflecting the responsibility of governments, NGOs, communities, and individuals to uphold the capacity of HEIs “to change and to induce change and progress in society” (UNESCO, 1998). In better understanding how universities and colleges can challenge the complexly oppressive and dominant systems under which they often operate and sometimes perpetuate, there is a growing trend at the national level to

also be more inclusive and make higher education both equally and equitably accessible to all on the basis of merit or through special measures.

The arguments of critics and proponents of current higher education institutions and systems alike share a common appreciation for the amazing capacity and potential they have in contributing to the advancement of society beyond merely economic considerations. Amidst criticisms of universities perpetuating the inequality reflected in society calls for a radical transformation of ideals, beliefs, minds, and hearts, and therefore, structures and systems can likewise be transformed. UNESCO argues for this imperative transformation in the World Declaration on Higher Education. If higher education systems were to endure such a “radical change and renewal,” disparities in quality and access to higher education for indigenous peoples, minorities, and other marginalized and vulnerable persons and groups would most likely be addressed and, therefore, no longer exist.

The higher learning of members from minority, indigenous, and other marginalized communities is vital and necessary to the overall progress and advancement of society, where in most parts of the world these same individuals are unmethodically or systematically denied equal and/or equitable access to universities and colleges due to a combination of one or more societal inequalities and injustices. Several barriers impeding marginalized populations to postsecondary education have been identified, and the incentives to break those same barriers down have been recognized (Sayed, 2009). Measures have been taken in several parts of the world to address the unjust treatment of minority groups and indigenous peoples in regards to accessing higher education—where some have been successful, while others have posed challenges thus far, thus providing opportunities for knowledge-sharing and learning

about how to improve effective strategies to overcome these challenges. Among these measures have been a number of policy-based practices to address issues of equality, equity, justice, and quality, including affirmative action and quota policies; the establishment of minority-serving institutions; inclusion and desegregation programs; the application of indigenous knowledge within indigenous and pluralistic societies; and the implementation of online education programs to accommodate geographically isolated populations and other marginalized groups. Despite the extensive literature available on higher education institutions and their capacity to contribute to the progress of humankind, it is still necessary to clearly understand the role of HEIs in directly and indirectly impacting the marginalized populations they actually and potentially serve and their greater societies. The argument in favor of equal and equitable access and quality of higher education for indigenous peoples and minorities is not limited to these respective populations alone; rather, unless and until they achieve access and quality higher learning of equal and equitable measure, the world will not attain the economic, social, moral, and spiritual benefits UNESCO (1998) envisioned for tertiary education. It is also unclear as to how this same potential capacity of universities and colleges to function as agents of social change—as indicated in the documents drafted at the World Conference on Higher Education (UNESCO, 1998)—will be manifested and made concrete through applications and practice; but in the same instance, the promise and hope of such a change is inspiring and hopeful, especially as a solution to addressing the current injustices and inequalities that exist within societies. While many barriers and obstacles are either currently preventing minorities and indigenous peoples from accessing higher education or presenting them with unequal opportunities to access universities and colleges, there are various actors across many level that are engaging in efforts to promote the right to

higher education for indigenous peoples and minority groups worldwide. It is important to understand these actions within national and international contexts in order to identify how such efforts can be improved and the rights of underrepresented groups can be secured at both micro and macro levels—globally.

Chapter 3: Methodology

Introduction

Taking into consideration the context of the study of diverse minority groups and indigenous peoples from three countries in separate regions of the world, the methodology for this research involves an integration of critical discourse analysis (CDA) and interpretive policy analysis (IPA) of several case studies of two respective minority groups and two indigenous groups—one broad and one specific, as well as corresponding or relevant international documents and instruments that address the right of minorities, the right to education, and the role of higher education in particular. This chapter describes the methodology design and implementation of the study by first introducing the context of researching minority and indigenous peoples and international human rights law inquiry. The research design and rationale of utilizing both CDA and IPA are also presented in this chapter, as well as the justification for the selection of three national cases: Afro-descendants and indigenous peoples in Brazil, Bahá'ís in Iran, and Māori in New Zealand. An explanation of the design and implementation of the accompanying mixed methods mode of inquiry (a combined application of qualitative and quantitative research methods at the basic level), including details specific to data collection and analysis is also addressed. Since upholding and maintaining the integrity of the research process is a vital objective, issues regarding the trustworthiness and reliability of data, threats to validity and relevant ethical considerations are highlighted. Finally, research procedures and strategies that address and intend to account for actual and potential limitations, delimitations, and challenges of the study are also discussed.

A Critical Framework on Decolonial Theory

The analysis is framed by a combination of critical theories that are anchored in decolonial thought. Much attention has been given to universalist-cultural relativist and “Western”-“Third World” debates regarding the legitimacy and relevance of international human rights discourses, especially relating to underrepresented groups (in this context). Decolonial theory poses to challenge these dichotomies, while still maintaining a critical lens, detached from the idea of any “centric” positionality. Decolonial theory acknowledges and responds to colonial and neocolonial approaches and perspectives without the need to posit a counter-approach. In *Discours sur le colonialisme*, for example, Césaire (1972) acknowledges the necessity of plurality and diversity among humankind: “it is a good thing to place different civilizations in contact with each other . . . an excellent thing to blend different worlds . . . a civilization that withdraws into itself atrophies . . . for civilizations, exchange is oxygen . . .” (p. 33). Césaire continues “that the great good fortune of Europe is to have been a crossroads . . . it was the locus of all ideas, the receptacle of all philosophies, the meeting place of all sentiments . . . the best center for the redistribution of energy” (p. 33), but he explains that such interactions of diverse peoples and cultures was not an outcome of colonialism, because out of colonialism, “there could not come a single human value” (p. 34). Fanon (1963), a protégé of Césaire, further expanded on the need to decolonize oneself (and by default, others) from the notion of oppressor and oppressed. Fanon’s demand for decolonization of

the mind was further enhanced by Macedo's (1999) as initially introduced in chapter 2:

It is only through the decolonization of our minds, if not our hearts, that we can begin to develop the necessary . . . clarity to reject the enslavement of a colonial discourse that creates a false dichotomy between Western and indigenous knowledge. It is through the decolonization of our minds and the development of political clarity that we cease to embrace the notion of Western versus indigenous knowledge, so as to begin to speak of human knowledge. It is only through the decolonization of our hearts that we can begin to humanize the meaning and usefulness of indigeneity (p. xv).

Thus, this framework aims to help the researcher find a balance in understanding the human condition by moving beyond two oppositional postures or “false dichotomies” often surfacing in international human rights discourses.

Researching Minorities and Indigenous Peoples

Minorities and indigenous peoples are often identified by researchers (and others) as “have-nots,” “disadvantaged,” “marginalized,” “underserved,” “vulnerable,” and so on in generalized terms—branding that is similar to more macro-level naming schemes including: “Third World,” “developing,” “underdeveloped,” and “Global South,” for example. Although such labels are commonly intended to highlight disparities, inequalities, and injustice, they are also capable of further marginalizing the respective populations in question. Identifying peoples with these kind of labels can potentially project an image of the helpless,

hopeless, oppressed “victim” or “other,” which has both dehumanizing and ostracizing attributes. Researchers who consider the role of ethics in health policy research, for instance, convey: “Labeling individuals as ‘vulnerable’ risks viewing vulnerable individuals as ‘others’ worthy of pity, a view rarely appreciated” (Danis & Patrick, 2002, p. 230). Ryan (1971) argues that the study of inequalities in society are often blamed upon the “victim,” therefore, promoting the “art of savage discovery,” rather than focusing on the social structures and systems that perpetuate these inequalities. Sometimes, the perceptions of the researcher(s) cloud the lens of inquiry—consciously or subconsciously—in truly understanding and learning about inequalities, such as in the case of studying indigenous or native populations, as purported by Bishop (2005) about Māori:

Despite the Treaty of Waitangi, the colonization of Aotearoa/New Zealand and the subsequent neocolonial dominance of majority interests in social and educational research have continued. The result has been the development of a tradition of research into Māori people’s lives that addresses concerns and interests of the predominantly non-Māori researchers’ own making, as defined and made accountable in terms of the researchers’ own cultural worldview(s) (p. 110).

In decolonial theory, which also highlights inequality and misrepresentation among vulnerable populations such as minorities and indigenous peoples, Vizenor (1994) calls for the inclusion of *survivance*. According to Chilisa (2012), “The concept of [Vizenor’s] survivance goes beyond survival, endurance, and resistance to colonial domination, calling for the colonizers and the colonized to learn from each other” (p. 50). Moving beyond the notion of “victim,” this approach becomes an

empowering opportunity for all without emphasis on labels that perpetuate an “oppressor versus the oppressed” motif. Supplementing Vizenor’s case, Tuck (2009) finds that research framed by postcolonial theory has a propensity for looking to “historical exploitation, domination, and colonization to explain contemporary brokenness, such as poverty, poor health, and so on” (p. 413). Tuck further argues “This is a pathologizing view that focuses on damage, ignoring the wisdom and hope of the researched” (p. 413). Instead, Vizenor introduces a research framework that is “desire-based,” where *desire* “is about longing for a present that is enriched by both the past and the future” (Tuck, 2009, p. 417).

Likewise, this study does not aim to present a “tragedy narrative” of sorts, but rather utilizes these labels to classify existing unequal and inequitable conditions that minorities and indigenous peoples endure, recognizing that such conditions are not perceived as “fixed or immutable” (Danis & Patrick, 2002, p. 312). The study and analysis of laws, policies, and strategies to address the written protections and rights of minorities and indigenous peoples by states and international governing bodies requires an awareness of the respective contexts of minorities and indigenous peoples, which sometimes may vary from state to state, and in other instances, may reveal overlapping similarities.

States by their very nature are sensitive towards any outside criticisms over their treatment of their minority population and consider it to be a sovereign and inviolable subject. Simultaneously, they do not hesitate to use the treatment of minorities by their adversaries as a useful foreign policy instrument. Great powers and regional players have used the plights of

Tibetans in China, Muslims in India or Christians in Indonesia to promote their narrow national agenda. The Middle East is no exception to this prevailing trend and discussions on the treatment of Middle Eastern minorities such as Egyptian Copts, Israeli Arabs, Turkish Kurds or Iranian Bahais have been highly politicized (Kumaraswamy, 2003, p. 244).

Kumaraswamy (2003) speaks of the problematic issues that sometimes arise when studying minority groups (which can likewise be attributed to the study of indigenous peoples or any other marginalized group or persons), particularly for their exploitation which often serves some kind of underlying political agenda at the national or international level. While Kumaraswamy's concerns do hold true in *many* instances, it is not applicable to all, and likewise, this study is not intended to go in that direction. Rather, the purpose of this research is to investigate how minority groups and indigenous peoples are recognized and protected by the state within their respective countries of residence with specific regard to if and how equitable access to quality higher education is supported and proposed at the national and international levels. This study, therefore, carries forth the intention of highlighting the current legal status of minority group and indigenous peoples' access to higher education in select countries—Brazil, Iran, and New Zealand—not to “politicize” nor exploit the current conditions of minorities and indigenous peoples but to acknowledge and learn if and how discrepancies they face are addressed nationally and internationally—through policy and legislation. Contextual background information on the states is necessary in order to present the case of the minorities and indigenous peoples in question. However, it is still important to acknowledge that Kumaraswamy's concern about studying minorities in general may oftentimes become problematic if the cases are exploited for alternative

means. Nonetheless, the intention of the researcher in this instance is to focus on a few cases independent of any political agenda. In order to appropriately address the case of vulnerable groups such as minorities and indigenous peoples, it is necessary to understand how and why most of them live as “oppressed” communities in the first place. There is a combination of one or more forces—of a cultural, economic, historical, political, or social nature—that are set in place to deprive and/or exclude people from marginalized communities equal and/or equitable access to rights. In other words, the conditions they face are not inherent, but imposed (even if the disparities experienced are passed down from one generation to the next).

International Human Rights Law Research and Analysis

When studying minority groups and indigenous peoples and their rights, researchers should also be aware of the issues specific to relevant minority and indigenous populations, while understanding the challenges that experts have faced in properly defining minority groups and indigenous peoples. The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (United Nations General Assembly (UNGA), 1992)—specifically covers rights for minorities, and as the title of the declaration implies, under international law, minority identity is based on national, ethnic, religious, and linguistic identities. Similar to the declaration on minorities, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (UNGA, 2007) indirectly classifies the unique status of indigenous peoples as those who have persons who have “suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.” How states classify

minorities and indigenous peoples and how they identify themselves and each other, may or may not diverge from the generalized definition of minorities and indigenous peoples as presented or referenced in international human rights law, and this potential divergence may or may not make it more difficult to secure the protection of these persons and groups at the international level. For instance, defining minorities either specifically or too broadly could potentially be inclusive or exclusive. Parties responsible for drafting international human rights law acknowledge the intersectionalities of marginalization (race/ethnicity, religion, class, gender, language, ability, indigeneity, etc.), but they are referenced broadly (as will be discussed further in the subsequent chapters); and the specific protection of rights of marginalized and vulnerable groups is still fairly new and ever-evolving within international human rights discourse. The same holds true for recognition on the right to higher education, in particular. For instance, women and girls belonging to minority or indigenous communities, for example, traditionally endure greater hardship and inequity than men and boys (MRG, 2011). However, it was not until the Declaration on the Elimination of Discrimination against Women, adopted in 1967, which eventually became the precursor for Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979 that the plight of women was acknowledged at the proverbial global table. Thus, the focus of this study of several minority and indigenous group cases comparing national-level and international standards of minority group and indigenous peoples' access to higher education will hopefully shed light on potential discrepancies, incongruities, and inconsistencies, as well as parallels and commonalities that could advance further learning and encourage ideas for sustainable, long-term improvement.

Critical Discourse Analysis and Interpretive Policy Analysis Framework, Design, and Rationale

Research Framework

Clearly, contention regarding the rights of indigenous peoples and minorities and how they are defined and enforced—nationally and internationally—has become a persistent problem across cultural, economic, political, and social lines; its study therefore, is equally challenging. Chilisa (2012) contends that “[C]urrent academic research traditions are founded on the culture, history, and philosophies of Euro-Western thought and are therefore indigenous to the Western academy and its institutions” (p. 1). Consequently, it is believed that the knowledge systems of those who have been

formerly colonized, historically marginalized, and oppressed groups, which today are most often represented as Other and fall under broad categories of non-Western, third world, developing, underdeveloped, First Nations, indigenous peoples, third world women, African American women, and on are excluded from knowledge production (Chilisa, 2012, p. 2).

The same critical stance is often applied to the context of international human rights law (Barreto, 2013; Maier, 2007; Mignolo, 2009; Twining, 2013; Waltz, 2001). Elabor-Idemudia (2002) poses the question: “How is it possible to decolonize (social) research in/on the non-Western developing countries to ensure that the people’s human condition is not constructed through Western hegemony and ideology?” (p. 231). Some scholars propose an alternative “anticolonial framework” grounded in critical theory (including race-and-gender-

based theories), decolonial theory,²⁰ and postcolonial discourses (Barreto, 2013; Chilisa, 2012; Macedo, 1999; Smith, 2012; wa Thiong'o, 1986). Such a framework, Chilisa (2012) claims, “is challenging every discipline to assess how knowledge production and theories of the past and the present have been shaped by ideas and power relations of imperialism, colonialism, neocolonialism, globalization, and racism” (p. 46). Inspired by the ongoing debate regarding a “universal” or “international” concept of human rights, and the emergence of the alternative, critical perspectives that challenge them and traditionally-“Western” approaches to inquiry, this study relies on an interconnectedness between critical discourse analysis (CDA) and interpretive policy analysis (IPA) as the methodological approach for this study (as a branch of discourse studies and content analysis research), particularly as CDA and IPA complement each other well.

Critical Discourse Analysis

Founded by thinkers bred in the Frankfurt School, CDA requires a sociopolitical posture, according to van Dijk (2001), in order to study “the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context” (p. 352). This “dissident” form of research requires that the critical discourse analyst (i.e., researcher) adopts an “explicit” position, because she wants “to understand, expose, and ultimately resist social inequality” and rejects the notion of a “value-free” society (van Dijk, 2001, p. 352). This inquiry is unique in that it applies CDA—a

²⁰ Decolonial theory is aligned with the notion that colonialism (although of the past) is still present today, and therefore, many proponents of decolonial theory argue that colonialism is not of the past (i.e., “post”) and that “postcolonialism” as a term is not truly accurate in describing the power-equality dynamics that still exist between dominant and non-dominant sectors of society (Barreto, 2013; Césaire, 1972; Chilisa, 2012; Dissanayake, 1988; Fanon, 1986; wa Thiong'o, 1986; Said, 1978; Shi-xu, 2007; Smith, 2012; Vizenor, 1994).

method of discourse studies traditionally shaped by “Euro-Western” paradigms (Shi-xu, 2007)—that is framed by multiple, overlapping critical theories that pose unique perspectives that do not necessarily challenge traditional “Western” scholarship, but integrate it with “non-Western” traditions, including decolonial and indigenous discourses that complement and strengthen each other. Similar to Vizenor’s (1994) concept of survivance, this study aims to understand how discourses regarding equitable access to higher education for indigenous peoples and minorities are both strong and weak, and how they could potentially be improved and benefit all (indigenous peoples, minorities, states, international agencies, and societies overall) nationally and internationally. Although a proponent of social equality, the researcher did not adopt an “explicit position” regarding international and national discourses on the rights of indigenous peoples and minorities, as this stance would potentially undermine the genuine analysis of the research, influencing a one-sided interpretation of texts. For instance, based on the researcher’s prior knowledge of and familiarity with critical studies and theories, international human rights, minority, and indigenous discourses, the researcher holds the belief that they are each comprised of both strong and weak claims and arguments.

Building upon the critical perspectives presented above, critical discourse analysis or CDA is framed by such approaches and perspectives. These critical perspectives frame a prevailing social order as historically situated, and therefore, relative, socially constructed and changeable (Locke, 2004). Furthermore, it also views this prevailing social order and its social processes as constituted and sustained less by the will of individuals than by the pervasiveness of particular constructions or versions of reality—often referred to as *discourses*. CDA views discourse as colored by and productive of ideology (however

“ideology” is conceptualized). The manifestation of power in society is not necessarily imposed on individual subjects as an inevitable *effect* of a way particular discursive configurations or arrangements (Locke, 2004, p. 1) privilege the status and positions of some people over others. Rather, CDA examines human subjectivity as at least in part constructed or inscribed by discourse, and discourse as manifested in the various ways people *are* and *enact* the sorts of people they are. CDA views reality as textually and intertextually mediated via verbal and non-verbal language systems, as well as through texts as sites for both the inculcation and the contestation of discourses. CDA views the systematic analysis and interpretation of texts as potentially revelatory of ways in which discourses consolidate power and colonize human subjects through often covert position calls (Fairclough & Wodak, 1997; Janks, 1997; Wodak, 1996; and Wodak, 2001). (Locke, 2004, p. 2). Fairclough adopts Foucault’s definition of discourse “as a practice not just of representing the world, but of signifying the world, constituting and constructing the world in meaning” (1992, p. 64). Critical discourse analysis of printed text—the format of data collected for this study—focuses on the use of language and the way in which patterns of meaning as socially constructed versions of reality—discourses—are embedded and disseminated in texts. The central purpose of CDA is to highlight the potential social effects of meanings that a reader of a text (i.e., in this case, the researcher) is positioned or called upon (interpellated) to subscribe to. In order to balance the subjective, critical branding of CDA, interpretive policy analysis (IPA) was simultaneously applied during the analyses of texts, particularly due to its emphasis on analysis of policies and legislation as was the case in this particular inquiry.

Interpretive Policy Analysis

Interpretive policy analysis or “IPA” shares some similarities and differences with CDA, and this is why the two methods work so well together as a complementary balance of approaches. IPA focuses specifically on policy, legislation, and/or any other form of policy decision-making context. The research methodology is qualitative in nature, shifting from computable “costs, benefits, and choice points,” and instead, focusing on values, beliefs, and feelings as a “set of meanings” (Yanow, 2000, p. ix). Like CDA, the interpretation conducted in IPA is based from the researcher or policy analyst’s (“research-analyst”) position, but to be clear, “interpretive” does not mean “impressionistic.” In other words, although interpretive methods such as IPA stress the centrality of human interpretation, and therefore, the subjective meaning to the researcher, the methods are nonetheless “systematic, rigorous, and methodical” (Yanow, 2000, p. ix). Iser (1993) emphasizes that the meaning of text does not derive from the text alone. Rather, a text’s meaning derives also from what the reader brings to it. In other words, the analysis is not exclusive to the author’s intent, the text, or the reader alone, but rather, the true analysis lies in the interaction of all three in the writing and the reading (Yanow, 2000).

IPA is usually conducted either *prior* to legislation, other policymaking decisions, or acts that are adopted and implemented or *after* they have been enacted. This analysis was conducted during the latter, focusing on what the language and content of these higher education-related measures mean and how, as well as for whom it has such meaning(s). To help the analysis lean closer to “objectivity” the policy analysis requires “local knowledge,” which Yanow (2000) defines as the “very mundane, expert understanding of and practical reasoning about local conditions derived from lived experiences” (p. 5). The local knowledge

of the researcher is embedded in a combination of years of research working on minority and indigenous rights issues within an international context, as well as participation in UN System sessions focused on minorities and/or indigenous peoples' rights. The researcher, however, does not claim to have "lived experiences" as an individual belonging to a particular minority group or indigenous community. Although this study focuses strictly on limited text from international and national levels of discourse on the right to education for minorities and indigenous peoples, the researcher's experience and research within these spaces adds greater reliability and authenticity to the analysis of the study.

Interpretive policy analysis complements critical discourse analysis in this study by applying metaphor analysis and category analysis. In order for metaphors to be understood in public discourse, their source meanings must also comprise a shared context (i.e., a set of standard or shared beliefs by a community also called an "interpretive community") (Black, 1962; Yanow, 2000). In this study, for example, the interpretive communities are limited to national governments and the UN System and its agencies. According to Yanow (2000), the "wider the 'echoes' or 'ripples' of metaphoric meaning, the more robust the analysis and the more likely that it will help [the researcher-analyst] articulate the architecture of the policy argument" (p. 48). Yanow extends this notion of an "architecture of meaning" to category analysis as well. Category analysis concentrates on examining language that is sometimes bounded by an organization or institution, policy or legislative site, program, or agency, and at other times, it is influenced by the language of general discourse. For example, racial/ethnic identities in the U.S. are most often categorized according to what is also commonly used in society. Some laws and policies vary in how their language is extracted and applied. As CDA frames a context of understanding social dynamics, IPA likewise

explores if and how policy and legislative measures are framed; international human rights discourses help the researcher understand how the instruments are being framed and if and how that frame is transferred to national contexts.

International Human Rights Case Studies

In order to effectively apply CDA and IPA in the reading of national and international laws, policies, and measures, the case study approach was adopted. Case studies are known to be highly contextualized, dynamic, and bounded (Greene, 2007), and therefore, they were best utilized for the comparative content analysis method in this study. Scholarly and advocacy-based work addressing minority and indigenous rights and minority and indigenous communities are most often presented as case studies, as they provide an “in-depth analysis” of one or more persons or groups at a time (Minority Rights Group, 2007). At the international level, human rights research is most often carried out through a “comparative method” or “comparable case strategy” on a state-by-state basis, where data analysis becomes a “global comparative analysis,” in which many case studies from various states or regions are compared to one another (Landman, 2006). National studies, in particular, are most often presented in the form of case studies to illustrate how states protect and violate the rights of minorities and indigenous peoples, for example. Within the UN System, however, country cases regarding human rights violations and protections are compared to the instruments requiring them. This is especially the case since upholding and protecting the rights of minorities and indigenous peoples (and human rights in general)—as directed under international human rights law—are the responsibility of the state, as they are accountable (yet not legally-bound) to enforce the articles set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities and

the Declaration of the Rights of Indigenous Peoples, for instance. The first article of the Declaration on Rights of Minorities—parts one and two, respectively—reads as follows:

1. “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.”
2. “States shall adopt appropriate legislative and other measures to achieve those ends.”

Similarly, Article 2 of the Declaration on the Rights of Indigenous Peoples states:

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 19 focuses on legislation and policies relevant to indigenous peoples:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Therefore, since the responsibility of protecting minority and indigenous rights lies primarily with the state, reports highlighting the status of minority groups and indigenous peoples are presented as nationally-focused case studies either in micro (issue-specific) or macro (broad overview) form (MRG, 2000; MRG, 2007). The case study format helps researchers and practitioners alike to monitor and report on how states have responded to both the

protection and violation of the rights of their minority and indigenous populations. Aside from having a geographically-bounded focus, human rights and social justice studies are also organized by specific categorical themes such as, health and HIV/AIDS education or microfinance entrepreneurship for women, for example. Social justice can likewise be broken into smaller contexts for analysis—juvenile justice, educational empowerment for underrepresented groups, and environmental protection are a few examples that can lead one closer towards identifying a case study. Human rights research, particularly at the global level and state levels, is most often presented through case studies (United Nations, 2009). Traditionally, therefore, the case study is the most popularly applied research tradition used in the human rights field.

According to Asher, Banks, and Scheuren (2007), a case study is:

an intensive investigation of a specific population using quantitative and qualitative methods. In many countries, academic and governmental researchers conduct these studies on a continuing basis. ICC [International Criminal Court] investigators can gain useful quantitative and qualitative information on populations and regions of interest to their work (p. 208).

Asher et al. (2007) believe that using case studies is one approach that can be analyzed on its own or in combination with other methods (i.e., censuses, sample surveys, administrative reporting systems, medical and anthropological forensic studies) specifically for revealing human rights abuses/violations as well as the upholding of those rights through quantitative means. Landman (2004) argues that applying a case study method that includes a combination of human rights measurements serve four specific functions: 1) provides a

contextual description, monitoring, and documentation of the violations; 2) allows for different types of violations to be classified; 3) detects mapped and patterned violations can over space and time; and 4) reliability on secondary analysis provides explanations for violations and policy implications for future improvements. By implementing a CDA-IPA approach, these four functions of the country-level cases, along with relevant international instruments, this study is limited solely to the first two functions Landman presents. The international instruments included in this study (as presented in tables 2.1 and 2.2 in Chapter 2) are compared to national-level strategies that also focus on indigenous and minority rights to higher education. Refer to Table 3.1 and Table 3.2 for the target populations under study and the relevant list of texts analyzed at the national levels, respectively.

Although based on secondary sources, the cases in this study are the country-level actions (via analysis of language and content of adopted international and national laws, policies, and strategies) taken to address minority and indigenous peoples rights to higher education in Brazil, Iran, and New Zealand.²¹ The relationship between the state, its indigenous and/or minority populations and advocates (communities and organizations), and higher education institutions is one of many complexities, where political, cultural, social, and economic implications are deeply interconnected.

Since this study compares one ethnic (racial) minority-indigenous (inclusive of all indigenous peoples) case, one religious minority case, and one specific indigenous group case

²¹ The researcher selected these three countries in particular to diversify the categories of minority groups and indigenous peoples (i.e., indigenous, linguistic, racial/ethnic, and religious) and to work with data that are most frequently available and accessible, since there are sufficient secondary resources available for each of the abovementioned countries to carry out this study. Furthermore, these three countries share colonial histories and have varying relations with United Nations systems and commitments to international human rights law. More information is provided in the section titled “Justification of Case & Text Selection.”

across three countries, it is important they be limited and bound for purposes of content analysis (the broader methodology CDA and IPA fall under). Content analysis, according to Krippendorff (2012), “entails a systematic reading of a body of texts, images, and symbolic matter, not necessary[sic] from an author’s or user’s perspective” (p. 3). It is also important to note that content analysis is a “careful, detailed, systematic examination and interpretation” of a specific collection of materials, which is implemented in order to identify consistent patterns, themes, biases, and meanings (Berg, 2009; Berg & Latin, 2008; Leedy & Ormrod, 2005; Neuendorf, 2002). Since international human rights law addressing the right to higher education and indigenous and minority rights is primarily based on a combination of both non-binding and binding instruments that are presented and analyzed in text alone, a comparative content analysis seems to be the most appropriate methodology to address these country-level cases. Critical discourse analysis, framed by diverse critical theories from the literature, and IPA can rely on those same theories, combined with the researcher’s knowledge to guide the manner in which the research questions are posed and answered.

Justification of Cases and Text Selection

Many may be inquiring why Brazil, Iran, and New Zealand were selected as the country cases for this study. What is the justification or rationale for the selection of three countries? What connects them? What do they have in common? History? Oppression? Colonization? Westernization? The diverse spectrum of loyalties to international human rights? Interestingly, the discourses at the state level each derive from these unique geographical spaces that endured some level of transformational and revolutionary encounters with colonialism, “Westernization,” and modernization, but clearly, they are not alone in this regard. Each of these countries also include unique approaches to laws and

policies at the state level, targeting minority and/or indigenous populations that may appear incomparable on the surface. The cases are unique because they highlight state-level systematic initiatives—rooted and influenced by distinct socio-historical contexts—that specifically target their local minorities and indigenous populations. Actions taken by minority and indigenous groups identified in these three countries were also directly and/or indirectly responsible for influencing the policies and legislation analyzed in this study. Each minority and indigenous group addressed in these respective national policies and legislative measures within Brazil, Iran, and New Zealand are supposedly protected within international human rights law, so it makes it far more interesting to analyze how national measures compare. For instance, in Brazil, a country perceived as a so-called “racial democracy,” it was a shock that federal race-based affirmative action and quotas were to be implemented in all public universities and colleges across the country (Telles & Paixão, 2013). In Iran, the government imposes a policy according to its systematic denial of the existence of one of its largest religious minorities. There is no other comparable case in the world like it (Ghanea, 2003). Lastly, New Zealand’s national legislation is a near duplicate of international human rights instrument content and language, but it also contains a coherent marriage between two languages, almost as if paying homage to the mother tongue of its indigenous population.

The selection of the three country cases have more to do with their respective relationships and interactions with international human rights law than with each other, especially since the comparison in this study is between international and national discourses—not between and across national discourses. The governments of Brazil, Iran, and New Zealand each have very high profiles in the international human rights arena, especially regarding indigenous peoples and minority groups’ rights. Brazil has traditionally

signed or ratified nearly all related international instruments and treaties. The Iranian government has also signed and ratified a significant number of international instruments, but the state's interpretation of minorities and indigenous peoples is limited and conflicts with international standards. New Zealand refuses to adopt any instrument related to indigenous peoples. As a matter of fact, the Parliament's uncoded constitution and supplemental laws and measures omit any reference to or mention of indigenous peoples or indigeneity. Despite the evident variations between these countries, the researcher identified following links that justify selecting Brazil, Iran, and New Zealand in a comparative analysis to international human rights discourses: 1) All three states have adopted a series of laws, policies, or strategies that are highly relevant to the question of equitable access to higher education for indigenous and/or minority populations within the past 25 years, which are "less visible" than other country contexts; 2) the minorities and indigenous peoples included in this study are highly engaged and mobilized in the promotion of their own rights and access to higher education within each state, and their actions have, in some shape or form, influenced the higher education policies and laws that specifically target them; 3) all three states had some level of extended interaction with "Western Europe" (i.e., via colonization, imperialism, industrialization, etc.); 4) historically, the minority and indigenous populations in question have been oppressed before statehood was even established; 5) the states manifest a robust level of commitment to relevant international human rights law instruments (particularly treaties); and 6) large disparities still persist within these three countries in regards to access to higher education.

In addition to the similarities shared between the cases of Brazil, Iran, and New Zealand, key differences they have also enhance the justification of their selection. First of

all, since this study involves a comparative analysis between laws and policies of state and international agencies—and not between states, the diversity of the cases enables the researcher to focus on analyzing how the contextual variables within each country could potentially play a role in the promotion of equitable access to higher education for minorities and indigenous peoples, as well as its relationship to international human rights law discourses. Additionally, this variation across countries from three separate parts of the globe—along with their distinct minority and/or indigenous populations, and unique higher education measures targeting their disadvantaged communities introduced at different periods of time—reveals that the researcher is leaning more towards objectivity by avoiding the selection of closely-related/more uniform cases. Such a variation allows for multiple conclusions and implications for future inquiry. Lastly, the noticeable differences in these countries could also help the researcher determine the validity of whether international human rights law can indeed be “universal” as applied within the respective cases of Brazil, Iran, and New Zealand.

The main selection criterion for these three countries for comparative analysis was their higher education policies and legislation targeting minorities and/or indigenous peoples. Therefore, once the countries were selected, it was evident which documents the researcher would focus on within each country. Constitutions of the three countries were analyzed, particularly since they represent the foundational “law of the land” upon which later government statutes are based. The most up-to-date national policies and legislation that specifically targeted access to higher education for the respective countries’ minorities and/or indigenous populations were selected. Therefore, the content—at the *minimum*—had to specifically focus on access to education (in the general sense) or higher education

institutions and their equivalents for either broadly or explicitly named indigenous peoples and/or ethnic/racial, linguistic, and religious minority groups. All national-level texts were taken from their original language on official government-affiliated websites (Portuguese in Brazil, Persian in Iran, and English in New Zealand) to guarantee authenticity of texts. Some of the Brazilian and Iranian texts were translated into English prior to the analytical phase of the research.

In the selection of international instruments, the World Declaration on Higher Education and Framework for Priority Action served as the foundation for relevant texts, as long as they were vetted and met the following criteria: 1) directly or indirectly address the right to access education and/or higher education; 2) directly or indirectly highlight protections for minorities and/or indigenous peoples; and 3) were adopted by a UN agency. In some instances, there were instruments, which did not meet all the criteria. For instance, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief—although clearly relevant to religious minorities was excluded from the sample of international human rights law instruments. This particular declaration would have been highly relevant to the case of Bahá'ís in Iran, but the declaration did not fulfill all criteria requirements, absent of any direct or indirect reference to higher education or general education, so it was excluded among the list of international instruments initially considered, among others. Despite their unenforceability and utter lack of legitimacy and “power,” international instruments set an elevated precedent for how human beings and their rights should be upheld and protected globally. International human rights discourses have significantly influenced the adoption of particular policies and laws at the state level to protect their indigenous and minority populations (e.g. the World Conference Against

Racism (WCAR) in Durban, South Africa inspired the adoption of affirmative action policies at a few Brazilian universities) and pressured states to alter their violation of human rights practices (e.g., select UN member states' outcry against the Iranian government's persecution its Bahá'ís minority resulted in the halting of state-ordered Bahá'í executions). While the legal potency of international instruments is questionable and yielding at the UN and globally, therefore, a "de facto element of force" is associated with them at national and even regional levels.

In this study, both national laws and policies, as well as international instruments were cited differently from traditional formatting and style rubrics found in the social sciences. Since the American Psychological Association (APA) formatting and style guide applied in this dissertation does not include specific guidelines for citing laws and policies, *The Bluebook: A Uniform System of Citation* was used for the formatting of all in-text citations referencing international instruments and state-level measures. Page numbers are nearly non-existent in such texts, and therefore, the analyzed texts are cited according to their identified location in the text.

Research Questions

In order to maximize efficiency and empirical grounding (Krippendorff, 2012), research questions were posed prior to the execution of the CDA-IPA analyses. As introduced in Chapter 1, the comparative analysis study answers the following research questions:

- 1) To what extent is the right to higher education conveyed in international treaties/instruments and national policies and legislation? How are the higher

educational rights of minority groups and indigenous peoples in particular addressed in international treaties/instruments and national policies and legislation?

- 2) How do international human rights discourses compare to country-level policies and strategies to protect minority groups and indigenous peoples' rights of equal and equitable access to quality higher education?

To supplement the main research questions, the following sub-questions were also included:

- a) What barriers are minority groups and indigenous peoples facing to access higher education, and how are governments advocating for and protecting the higher educational rights of their minority and indigenous populations?
- b) How are “equal,” “equitable,” and “quality” education factored in regarding the right of minority groups and indigenous peoples' access to higher education within international instruments and national/local policies and practices?
- c) How do national-level policies and strategies promoting equitable access to higher education for minority groups compare to international human rights law treaties and instruments regarding the right to higher education for minority groups and indigenous peoples?

This study highlights four specific minority/indigenous cases in three countries: Afro-Brazilians and indigenous peoples in Brazil, the religious Bahá'í minority in Iran, and the indigenous Māori of New Zealand. Due to the diverse cases, national-level legislation and policy vary from country to country. International instruments, depending upon their intended subject matter also differ at varying degrees, but for the most part, their content

and thematic concepts overlap and are reinforcing in nature. Table 3.1 below includes more details on each minority and indigenous group the policies and/or laws targeted within each country, and Table 3.2 introduces the details of the various national-level instruments that were analyzed for this study.

National Policies & Legislation

Data Collection and Analysis

Critical Discourse Analysis and Interpretive Policy Analysis Methodological Approaches

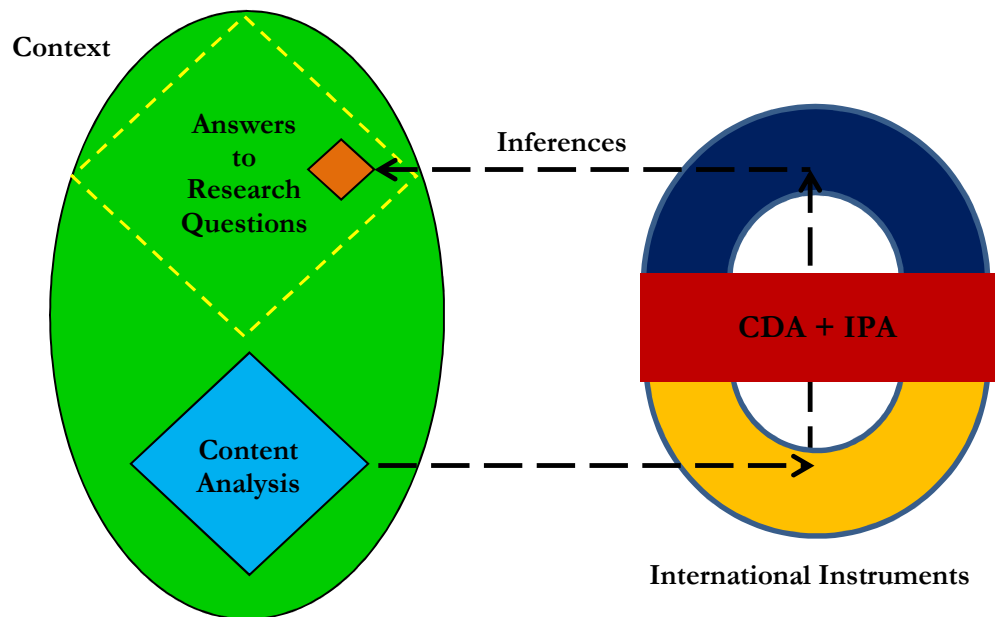


Figure 3.1: Visual Diagram of Critical Discourse Analysis and Interpretive Policy Analysis

Country	Minority Focus ²²	Identity Category	Policies & Laws	Primary Material(s) Analyzed	Primary Actor(s)	Additional Indigenous/Minority Group(s) in Country ²³
Brazil	Afro-Brazilians & Indigenous Peoples ²⁴	Ethnic/Racial ²⁵ / Indigenous	Affirmative action; quota policies	Constitution; Brazilian university policy documents; federal higher education legislation	State; local universities; NGOs; advocacy groups	<i>Arará, Awá, Kayapó, Makuxi and Wapixana, Nambiquara, Tikuna, Tukano, Uren-Wau-Wau, Yanomami</i>
Iran	Bahá'ís	Religious	Exclusion of Bahá'ís from higher education	Constitution; higher education policy documents;	Bahá'í community; NGOs; advocacy groups	<i>Arabs, Azeris, Christians, Kurds</i>
New Zealand	Māori	Ethnic/Racial	Minority-serving institutions (wananga); indigenous philosophies	Treaty of Waitangi; State constitution; Parliament higher education policy documents; university policy documents	State; NGOs; CSOs; advocacy groups	<i>Pacific Islanders</i>

Table 3.1: Minority and Indigenous Cases for Analysis (by Country)

²² Each of these minority groups represents the largest minority groups in each of these three countries.

²³ This column is provided to acknowledge that there are additional minority/indigenous group that resides within each of the three countries in the table above that are not included in this study in order to limit its size.

²⁴ The Brazilian government has not enforced any laws, policies, or strategies on the basis of indigenous tribes or “Indians.” Indigenous peoples in Brazil are all broadly identified under one category.

²⁵ Race is not considered to be a minority classification in international law, but ethnicity is. To clarify the relationship between ethnicity and race, however, this proposal includes both categories.

Type of Legislation/ Policy	Brazil ²⁶	Islamic Republic of Iran	New Zealand
<i>Constitution</i>	Constitution of the Federal Republic of Brazil (1988) ²⁷	Constitution of the Islamic Republic of Iran (1979)	Constitution ²⁸ : • New Zealand Bill of Rights 1990; and • Treaty of Waitangi (1840)
<i>Legislative-Level</i>	Law of Guidelines and Basis of National Education (LDB); Lei de Cotas (“The Quota Law”) Supreme Court (Supremo Tribunal Federal) decisions on affirmative action and quota policies in Brazil	Civil Code of the Islamic Republic of Iran	Treaty of Waitangi Act 1975; Education Act 1989; Human Rights Act 1993;
<i>Judiciary-Level</i>		—	—
<i>Ministry-Level</i>	National Education Plan (PNE)	Islamic Republic of Iran Ministry of Science, Research and Technology’s letter to universities calling for the expulsion of Bahá’í students	Tertiary Education Strategy 2014-2019; Ka Hikitia – Accelerating for Success 2013-2017
<i>Memorandum</i>	—	Islamic Republic of Iran’s Supreme Revolutionary Cultural Council’s memorandum to all higher education institutions	—

Table 3.2: National-Level Discourses Relevant to Indigenous Peoples and Minority Groups’ Access to Higher Education

²⁶ Although Brazil’s education system is highly decentralized, the purpose of this chapter is to compare national-level education policies and laws—not those at the municipal level. The 2012 Quota Law is an example of the state’s affirmation that the law is a federally-enforced one, and therefore, applicable in all municipalities.

²⁷ The Brazilian Constitution includes the latest reforms as of 1996 and was last updated in 2008.

²⁸ According to the New Zealand Constitution Act 1986, the Constitution of New Zealand is comprised of the following separate legislative measures: Constitution Act 1986; New Zealand Bill of Rights Act 1990; Electoral Act 1993; Treaty of Waitangi; and Standing Orders of the House of Representatives. Only the relevant texts were analyzed for this chapter and are included in the table above.

Figure 3.1 above shows what critical discourse and interpretive policy analyses look like at the most basic level for this particular study, where the researcher relies solely on texts (national and international measures) for both CDA and IPA. Broadly speaking, CDA and IPA both fall under the umbrella of content analysis. Content analysis can be conceived as a research technique that examines and analyzes “artifacts of social communication” (Berg, 2009, p. 341). Most often, these “artifacts” come in the form of written documents or transcriptions of recorded audio or visual communications. Yanow (2000) refers to interpretations of beliefs, feelings, meaning, and values as “artifactual interaction,” particularly such as in this case when states are interpreting international-level measures for their respective national contexts. According to Holsti (1968), content analysis can be broadly defined as “any technique for making inferences by systematically and *objectively* identifying special characteristics of messages” (p. 608). Thus, any type of records that convey messages aside from written text such as photographs, video, or any other materials that can be converted to text are suitable for content analysis. Figure 3.2 below presents the seven-step stage model of how this content analysis—utilizing CDA and IPA—was applied.

After the research questions for this study were identified, the next step was to predetermine some analytic categories before delving into the materials selected for analysis. These categories were developed before and amended after the relevant texts were reviewed, but regardless of when they were determined, they must not only be consistent with the research questions asked and the methodological requirements, but they must be developed as they relate to the properties of the phenomena under investigation (Schatzman & Strauss, 1973). The predetermined and later amended categories and themes were identified by the researcher (see Table 3.4 and Table 3.5). These categories and themes were grounded in the

data from which they emerged; they were also shaped by the various discourses highlighted in this study. Table 3.4 and Table 3.5 show the variables that emerged from analyses of international instruments and national laws and policies, respectively. Evidently, international instruments, as broader in scope as they are, reflected many more variables than those reflecting national or local contexts within state-level measures. Some variables emerged across both international and national-level documents—human rights and justice, higher education for social change, critical discourse and studies, decolonial theory, and higher education for minorities and indigenous peoples. These categories, then, were split across three different “classes”—common classes, special classes, and theoretical classes (Berg, 2009). *Common* classes include general cultural classifications to distinguish between and among people, things, and events (e.g., race/ethnicity, class, indigenous, minority group, gender, religious affiliation, language, student, mother, etc.). The purpose of utilizing common classes is to assess whether or not certain demographic characteristics are related to any patterns that may arise at any point during the data analysis (Krippendorff, 2004). For instance, the researcher explored questions such as: Are identities of minorities and indigenous peoples consistent or varying within and across national and international policies and legislation? What inclusive and exclusive language regarding their identities is used? *Special* classes, on the other hand, are labels that are utilized by members of specific communities as a means of distinguishing among people, things, and events within their own bound environments and/or experiences (e.g., *favelas*, home to many socioeconomically-disadvantaged Afro-Brazilians, is a term referring to shantytowns within the Brazilian

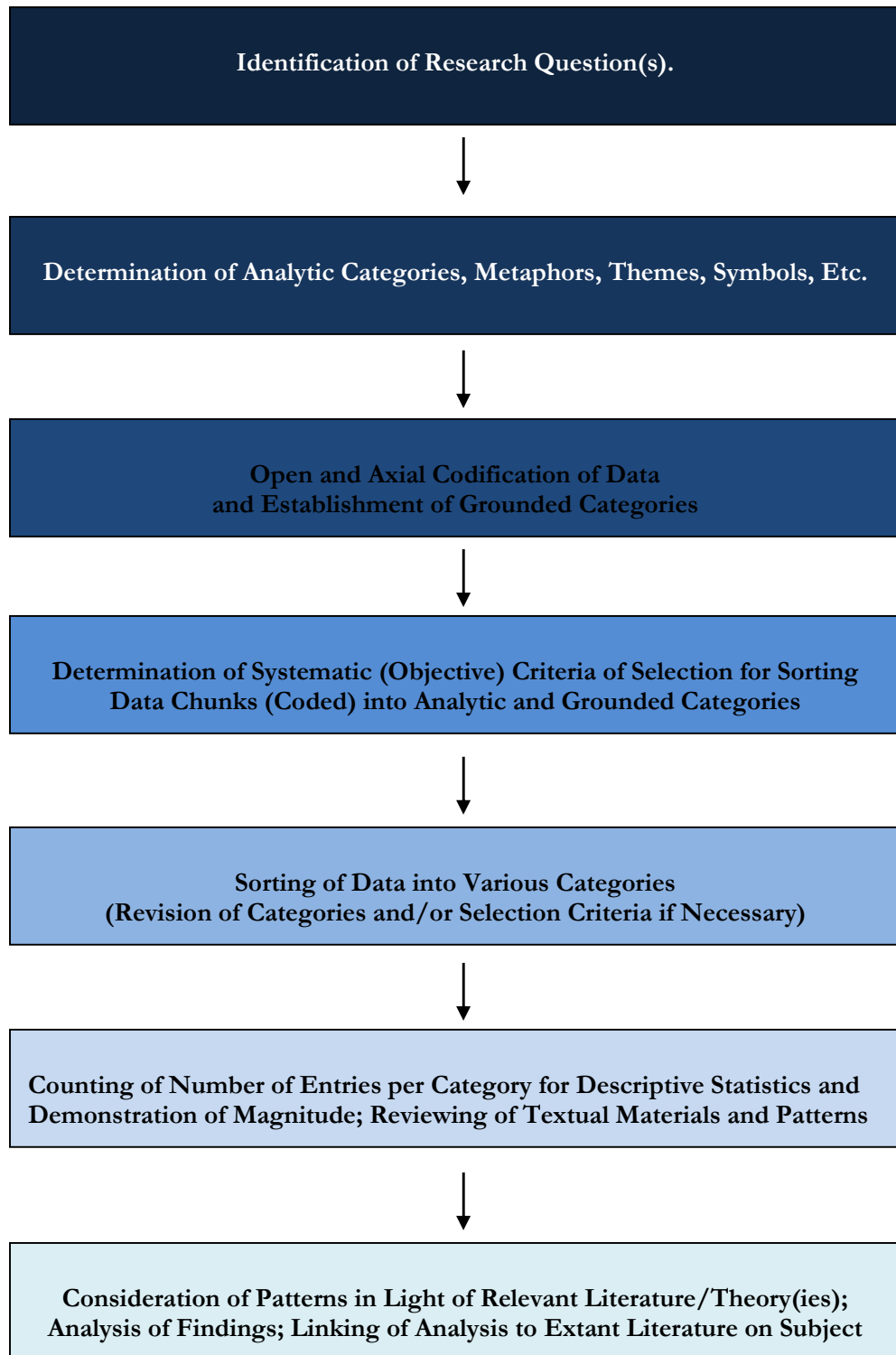


Figure 3.2: Stage Model of Qualitative & Quantitative Content Analysis
Source: Adapted from Krippendorff (2012)

context just as *hui* is an indigenous consultative practice derived from Māori culture, which is today implemented in contemporary New Zealand education policy). Similarly, language such as “States Parties” is used in all international instruments referring to states that have, to some degree, agreed to adopt the instrument’s respective standards and mandates. In IPA, special classes are equivalent to identifying language shared (via category or metaphor analysis) by “interpretive communities.” Lastly, *theoretical* classes refer to those that emerge in the course of analyzing the data, and therefore, they cannot be determined prior to the start of the analysis. The classification of these categories was determined by analytical factors of CDA and IPA. Since the predetermined variables, categories, and themes in this study were solely based on background information and preliminary research conducted to develop the research questions and contextual background for the study, the development of additional categories and themes was both anticipated and necessary, especially as the CDA-IPA research progressed, revealing new themes that were not visible in the preliminary findings. It was also necessary to alter some of the predetermined categories and/or themes to better accommodate the scope of the research.

In order to commit to maintaining an “objective” analysis, a predetermined “criteria of selection” was formally established prior to conducting the analysis. Creating an exhaustive criterion of selection (i.e., categories, themes, etc.) was important for each variation of message content the researcher planned to analyze so that, if necessary or applicable, they were rigidly and consistently applied and other researchers who analyze the same messages would yield similar or comparable findings (Berg, 2009; Berg & Latin, 2008; Selltitz, Jahoda, Deutsch, & Cook, 1967). This practice of applied regularity was also beneficial to ensuring reliability of the measures applied, as well as the validity of the

subsequent results of the study. The categories that comprised the criteria for the analysis were relevant to the research questions posed and not based on the researcher's hypotheses or biases. Holsti (1968) explains this process: "The inclusion or exclusion of content is done according to consistently applied criteria of selection; this requirement eliminates analysis in which only material supporting the investigator's hypotheses are examined" (p. 598).

Prior to identifying a criteria of categories, it was necessary to select the level(s) desired for the sample and the units of analysis that would be counted (Berg, 2009), keeping in mind that such selections are relevant and would most effectively answer the research questions posed in the study. Sampling may occur at all of the following levels: words, phrases, sentences, paragraphs, sections, chapters, books, writers, ideological perspective, subject or topic, or other similar elements that are relevant to the context of the study (Krippendorff, 2004), but this study did not include sampling at the book, chapter, or writer level, because they were irrelevant to the scope or data sampling of the research. Likewise, units of analyses range from the smallest unit (words) to the largest (semantics). Since the data collected in this study was limited to international instruments and national policies and legislation, all units of analysis were considered for this study, as the structure and organization varied from one document to another. Table 3.3 below presents a more detailed explanation of the various units of analysis that can be measured in CDA and IPA.

As indicated in Table 3.3 below, the measurement of some units relies on frequency distribution, and although quantitative or numeric occurrences of particular words and phrases are important to capture, the qualitative thematic content—latent and manifest meanings are equally—if not more so—important. As a matter of fact, it is an advantage to the researcher to implement both quantitative and qualitative approaches in the analysis of

the text, especially since the counting of text or quantification of data focuses more on the “procedures of analysis” rather than on the “character of the data available” (Selltiz et al., 1959, p. 336). Selltiz et al. (1959) also note that heavy quantitative content analysis results in a partially arbitrary limitation in the analysis of the data by excluding all accounts of communications or text that are not numbers as well as those data that may lose meaning if reduced to a numeric form (e.g., definitions, symbols, detailed explanations, photographs, and so on). Since this study intended to transcend beyond the boundaries of a basic summative or descriptive analysis to include a normative analysis as well, the blending of both quantitative (via tally sheets to determine specific frequencies of relevant categories) and qualitative (via examination of ideological mindsets, themes, topics, symbols, and similar phenomena) analytical approaches were most effective in yielding the most reliable findings, ensuring that they are still grounded in the data. It was especially important to the researcher to maintain objectivity (as humanly possible) when comparing country-level content to international instruments as a means of drawing inferences for recommendations on further policy, theoretical, and practical implications. Thus, a blend of both manifest and latent analysis methods were also applied in this study. *Manifest* content refers to data that is physically or explicitly present and countable, whereas *latent* content requires an analysis that is more so an interpretive and/or figurative reading of the symbolism underlying the physical data. Latent analysis was also beneficial in identifying knowledge gaps, inconsistencies, and/or parallels which may be present during the comparative analysis between international instruments and country-level cases.

Unit	Example Relevant to Research	Definition
<i>Words</i>	Minorities; Māori; indigenous peoples	The <i>word</i> is the smallest element or unit of measure used in content analysis. Most often it is used in a frequency distribution of specified words or terms (quantitative).
<i>Themes</i>	Application of Indigenous Knowledge in Higher Education Policy	A <i>theme</i> is considered more useful since it includes an overarching or umbrella category that includes a simple sentence, a string of words with a subject and a predicate. Since themes can be located in a variety of places within most written documents, it is important that the places in which they will be analyzed are identified by the researcher in advance.
<i>Characters</i>	Māori students; professors; New Zealand Minister of Education; Minister of Culture & Heritage	In some studies, <i>characters</i> or specific individuals/people, entities, or institutions are significant to the analysis. In this instance, the analysis of a character is based on its frequency.
<i>Paragraphs</i>	Paragraphs/“articles”/“sections” of the Treaty of Waitangi and UN Declaration on the Rights of Indigenous Peoples	The <i>paragraph</i> is a more complex unit of analysis, because it may often contain one or more kinds of units or sub-units within it (i.e., word, themes, characters, items, etc.), which may fit into varying or overlapping categories.
<i>Items</i>	Treaty of Waitangi; Declaration on the Rights of Indigenous Peoples	An <i>item</i> represents the whole unit of a message—a text or book, letter, speech, journal or diary, article, newspaper, interview, audio or video recording, etc.
<i>Concepts</i>	Māori inclusion in higher education	A <i>concept</i> is considered a “more sophisticated” type of word counting, which involves groups of words that are clustered into concepts or ideas. In some instances, these clusters may constitute variables in a typical research hypothesis.
<i>Semantics</i>	Emphasis of the word <i>mātauranga</i> (Māori context for knowledge) suggests a preservation of indigenous/Māori customs and traditions was considered.	The unit of <i>semantics</i> goes beyond analyzing the number and type of words to explore how affected the word(s) may be (i.e., how strong or weak the usage of a word is in relation to other words and/or the overall sentence).

Table 3.3: Units of Analyses Used in Discourse and Policy Analyses
Source: (Berelson, 1952; Berg, 1983; Merton, 1968; Selltiz et al., 1959)

Limitations, Delimitations, and Challenges of the Study

Despite their advantages and benefits, the methodologies of CDA and IPA also pose some areas of concern. Regarding CDA, for example, several critics point to its lack of: “systematicity” (when interpretation and analysis is based on factors other than frequency (i.e., qualitative determinants)), transparency, and strict guidelines or governing principles (Cohen, Manion & Morrison, 2008; Flick, 2002; Coyle, 1995). Denscombe (2007) further expands on some of these issues due to the methodology being heavily reliant on the interpretation of the researcher.

Like CDA, IPA shares some of these assumptions. Reiterating Iser’s (1993) position, IPA in particular emphasizes that which the research-analyst brings to the interpretation is meaningful and significant to the findings of the research, because without an interpretation on the part of the researcher or reader, the methodology and practice of analysis is contradictory. What is often forgotten is that the researcher/interpreter must have qualifying knowledge and/or expertise on the subject or topic under analysis. In the words of Gillies (2009), such analyses that connect “theory and practice beyond the text cannot be set down as a method but emanate from the particular awareness of the individual involved.”

The role of the interpretation of the researcher is also central to questions regarding robustness, rigor, and transparency of these two content analysis methods. The combined application of CDA and IPA employed in this study is framed by an integration of theoretical frameworks, ranging from critical theories to human rights discourses within the broader context of social theory, and therefore, the analyses are highly dependent upon the knowledge and understanding of the researcher-analyst. Relevant to a “heavy dependency”

Class of Variables	Categories⁺	Metaphors[*]	Symbols[*]	Themes⁺
<i>Common</i>	Ethnic, national, linguistic, and religious minorities; indigenous peoples; persons with disabilities; women; girls	—	—	Vulnerability of intersecting identities
<i>Special</i>	States parties; self-determination; measures; all	—	Measures	Inherent dignity/humanity; measures; self-preservation (identity); collective vs. individual identity
<i>Theoretical</i>	Identity; access: merit vs. capacity; measures (to achieve equity); quality; relevance; diversity; vulnerability; equality; education; higher education; inclusion vs. exclusion	One human family/race; nation/state as a body	One human body	The “Other”; unity in diversity; Technology, science, and indigenous knowledge; higher education for social change/transformation; minority and indigenous autonomy; collaboration and consultation

Table 3.4: Critical Discourse Analysis and Interpretive Policy Analysis Variables of International Instruments

Class of Variables	Categories⁺	Metaphors[*]	Symbols[*]	Themes⁺
<i>Common</i>	Ethnic, racial, religious minorities; state/government; indigenous peoples; color; language; tribe	—	—	—
<i>Special</i>	Afro-Brazilians; Indians (indigenous peoples); Māori; Bahá'í	—	—	—
<i>Theoretical</i>	Education; higher education; equality; equity; access; colonization/imperialism; citizenship; nationalism	Nation as a body	—	“East” vs. “West”; Civilization vs. civilizing the “other”; oppressor vs. oppressed; pluralism/cosmopolitanism

Table 3.5: Critical Discourse Analysis and Interpretive Policy Analysis Variables of National Laws and Policies

on the interpretation of the researcher, a common misconception about IPA is that symbols and meanings of policy and legislation are “not real” and that only material, physical acts or consequences of such policies are true measures of policy. Practically, however, policies are meant to achieve something expressive, material, or both, and therefore, exploring the meaning(s) of symbolic representations of policy or legislation is necessary in order to identify how their interpretation leads to specific material and/or physical actions.

According to Krippendorff (2012), content analysis, in general (and by default, its relevant methodologies—CDA and IPA), has several *limitations* that must be considered and addressed:

- Material that is available for research limits the analysis. Research that is available might have time constraints (i.e., be outdated) or address a part of a phenomenon

rather than the whole or all of it. So it is not always considered to be comprehensive in scope.

- For the most part, it is purely descriptive in nature, without going into the underlying purpose or motives of the content. In other words, it may describe *what* is there, but it does not address *why* it is there.
- The accuracy of the method depends on analyzing data that are representative of what is occurring in order to prevent inaccurate or biased results, particularly when applying a critical lens.

Although in most cases, the availability of texts can limit the research and the analysis therein, the design of this study was based on the relevant texts that were available for this study. Thus, rather than the number of texts limiting the study, they have helped shaped and bound the limits of the study. Furthermore, if the material available was limited, the researcher could have altered the study to accommodate a broader supply of textual evidence if needed, but it was not necessary to do so in this case. The researcher conducted an early assessment of the potential inventory of texts to be included in the study. All texts discovered that were irrelevant and lacked substantive content were excluded. Secondly, while the text under analysis was not “outdated,” it was not necessarily comprehensive in scope, particularly because laws and policies are often terse and insipid in nature, because their purpose is to “bring order,” and therefore, are expected to be implemented and upheld. Regarding CDA and IPA, however, even comprehensive text is laden with meanings, and thus, what is absent or missing from texts is equally important to their overt, visible contents and language. As indicated previously, the awareness of the researcher is central to the

analyses conducted in this study, and therefore, the contextual knowledge regarding the purpose for the drafting of the international and national measures in question (the “why”) complement the descriptive nature of the texts (the “what”). Furthermore, most of the international instruments are prefaced with a contextual introduction so their description as well, as their purpose for being drafted are explained in the instruments themselves.

Challenges

The challenge of critical discourse and studies and interpretive policy analysis lies in “finding a balance between zooming-in on the fine-grained discourse and zooming-out to provide enough context to make the analyses mean something to someone else” (Rogers, 2011, p. xviii). Gee (2011) treats a common and incorrect criticism of CDA—that such work imposes its (usually leftist) politics top-down on the data from the start.

Textual or discursive analysis alone is not sufficient. Rather the meanings of social organizations (Kress, 2011), mediated structures and events that shape interaction and motivate emancipatory agendas for learning and social transformation (Fairclough, 2011), and adopting and applying “tools of inquiry” help elevate discursive study and analysis through empirical channels of both CDA and IPA.

The *challenges* of the applied methodological approach, on the other hand, include the following:

- The method requires a significant amount of time to prepare and train researchers.
- The analysis process itself is rather time-consuming, taking substantial time to design and execute the study.

- Its application is vulnerable to bias since the analysis is based on the researcher's interpretation and reading of the materials being analyzed. Therefore, the analysis is more likely prone to subjective interpretations.
- It is very easy to lose the meaning/essence of language when isolating one single word from a greater context of meaning. One has to be careful not to lose sight of this when conducting CDA and IPA, as the potential to be overly-critical or not critical enough is conducive in such instances.

CDA and IPA are indeed both labor intensive and time-consuming, as both of these methodologies require sufficient training and preparation in order for the analyses to be carried out effectively. Thus studying both CDA and IPA was key to the researcher's understanding of how to interpret the data while appropriately applying her own knowledge of the texts and their contextual relationships. While the researcher does not claim to be exceptionally proficient nor an expert in CDA and IPA, the role of the researcher as interpreter is central to this study, and therefore, it was necessary to explore and study the various theories underlying critical discourse and policy analyses. This study, therefore, focused on a *combination* of units of analysis including: words, characters, concepts, sentences, themes, paragraphs, phrases, and semantics, for example. The researcher was very intentional in the selection of each unit of analysis to ensure units of text: a) were not extracted out of context; b) were aligned with one or more applicable variables (e.g., categories, metaphors, themes, etc.); and c) were directly relevant to the focus of the study.

It is to the researcher's advantage that these limitations and challenges were recognized both prior to and during the study so that they could be addressed accordingly.

Ultimately, the researcher's goal was to work most effectively in minimizing the impact these limitations and challenges may have on implementation of the research and the actual findings of the study by limiting interpretation and analysis to evidence that was available and reliable.

Although these challenges and limitations exist within the realm of content analysis research, CDA, and IPA, there are also clear advantages to conducting content analysis as well that Krippendorff (2012) highlights. The first and most clear advantage of content analysis is that it involves unobtrusive techniques since the data is already collected prior to the researcher's analysis. Thus, the data is void of "contamination" and invulnerable to external errors such as researcher bias or influence during data collection (Krippendorff, 2012). A second advantage is that content analysis has the ability to handle unstructured matter as data. While structured data, such as surveys, interviews, focus groups, and questionnaires make it convenient for researchers to readily tabulate, code, and process data on a computer, for example, the primary benefit of having unstructured content analysis data is that it "preserves the conceptions of the data's sources, which structured methods largely ignore" (p. 46). Another advantage is the notion that content analysis is "context sensitive," meaning that the researcher is able to process the data that are significant, meaningful, informative and even representational to others based on how others understand and define them. The researcher was able to focus on contextualizing by understanding how the data are read and/or how they make sense to those who interact with them. Lastly, content analysis is a research method that can handle large volumes of data. Given the exponentially growing rate of publications—in print and online, there has been a vast increase in the

amount of data that is available globally, and due to advancements in technology, there is software readily available that is capable of coping with such volumes of information.

Quality Assessment, Reliability, and Validity

Most proponents of critical discourse analysis and interpretive policy analysis naturally defend questions regarding their guarantees of quality assessment, reliability and validity. Nonetheless, they still acknowledge and address the challenges and questions that arise regarding transferability, generalizability, and the like (Gillies, 2009; Wodak & Meyer, 2009; Yanow, 2000). Discussions of ensuring objectivity, reliability, and validity can be modified to adapt to methodologies utilizing CDA and IPA as well, however. The question of how to guarantee “intellectually challenging and rigorous” research that is simultaneously critical remains to be a challenge (Silverman, 1993, p. 114), but strategies have been introduced to help address such a question. Rather than focusing on issues of if and how reliable, valid, generalizable, and replicable findings are, however, it may be more suitable to apply terms such as “credible” and “plausible” instead (Rapley, 2008). This way, credibility and plausibility of the findings could be addressed to reflect the research being open and transparent about: 1) the textual evidence that was reviewed; and 2) the basis of the claims made about the evidence. Furthermore, Potter and Wetherell (1994) believe that the methodology of CDA should convey “coherence” to a text or group of texts—how the content, effect, and function of the text(s) fit together—and that it should be “fruitful”—contributing something that is useful or significant to the field.

In order to help minimize the risk of researcher bias and subjectivity, the combination of CDA and IPA, and a method of triangulation were applied. The

triangulation method applied relied on shifting across three levels of analysis: 1) assessing relationships between and across texts and their content (as related to equal and equitable access to quality higher education for minorities and indigenous peoples); 2) focusing on the context of the texts drafted and their purpose; and 3) the broader contexts of the sociopolitical and historical experiences of indigenous peoples, minorities, state governments or representatives, and the UN system.

This study was not guided by the researcher's personal ideas of how the texts *should* read. Rather, the researcher's interpretation and understanding of international and national-level texts were based on her knowledge of the contexts that they come from. This means that the text and the interpretation are related to broader social issues in Fairclough's (2003) "transdisciplinary dialogue (p.6), which would not be available if one were engaged merely in textually-oriented analysis.

Rapley (2008) suggests that the conventional research values of reliability, validity, and generalizability or replicability are inappropriate for CDA, a position also held by Taylor (2001) because the very epistemological claims upon which CDA rests actually problematize such concepts. Instead, Rapley (2008) suggests focusing on credibility and plausibility of the research findings, leaving the analysis and interpretation "open and transparent both about the textual evidence under review and about the basis of the claims made about it" (Gillies, 2009). Furthermore, the rigor, robustness, and transparency of the study is strengthened by the researcher's own knowledge and experience in international human rights law, particularly relating to the right to education, indigenous peoples, and minorities (refer to "Positionality" section below). This awareness strengthens the analysis and conclusions of this study, especially since the researcher acknowledges that limitations, strengths, and

weaknesses persist in both international and national-level laws, policies, and strategies confined to written text, as well as those in the methodologies of CDA and IPA and her own positionality.

Positionality

While the researcher does not claim to be an “expert” in the field of minority and indigenous peoples’ rights or the right to higher education within international and national contexts (and as formal training would definitely strengthen the researcher’s skills and advance her level of knowledge in the field), the researcher has significant knowledge and experience that is highly relevant to this study. The analyst has worked as a researcher and an advocate in the field of international human rights law, particularly for minorities and indigenous peoples for over seven years. In addition to independent work, the researcher has collaborated and consulted with lawyers, scholars, and activists who are considered international human rights law experts on issues including: the rights of minorities, indigenous peoples, and the right to education. Not only does the researcher have a consultant role with Minority Rights Group International—the only international NGO focusing on the rights of minorities and indigenous peoples, in consultative status with the United Nations—but this partnership has also resulted in the researcher’s current role as research assistant to the first (and former) UN Independent Expert on Minority Issues. Consequently, the researcher-analyst is actively engaged in work involving research on the legal rights and measures of indigenous peoples and minorities within national and international contexts, as well as participation in relevant events within the UN System, such as the most recent first World Conference on Indigenous Peoples (WCIP) held in September

2014 at the UN headquarters in New York City. The right to education has been an area of focus for the researcher through her ongoing, collaborative work with NGOs, INGOs, and activists in raising awareness and shedding light on the unequal and inequitable access to education and higher education, for indigenous and minority populations, in particular. Thus, even though the researcher does not self-identify as an “expert,” she is nonetheless proficient with international human rights discourses as they relate to minorities and indigenous peoples in order to make some convincing and sound interpretations of the findings of this particular study. The researcher also self-identifies as a follower of the Bahá’í Faith; and based on her past research and personal experiences and relationships relevant to the right to higher education for Bahá’ís in Iran, she has a greater knowledge and familiarity of studying this population and the government’s policies towards them. Aware of her identification as a Bahá’í and her positionality as a privileged student pursuing an advanced graduate degree, the researcher made efforts to self-assess, evaluate, and revisit her analyses of Iran’s national policies and legislative measures as they compared to her analyses of measures adopted by Brazil and New Zealand. This “check-in” was necessary for the researcher to avoid potentially contaminating the findings by applying hypercritical or emotion-centered analyses and compromising the credibility of the interpretation of the findings. This disclosure on the part of the researcher does reveal, however, that the researcher had more preliminary knowledge on the case of Bahá’ís in Iran than on Afro-Brazilians and indigenous peoples in Brazil and Māori in New Zealand prior to the commencement of the study. Having been formally educated in a “Western” system of teaching and learning, the researcher recognizes that her analysis or interpretation is not representative of any member of any underrepresented group. Furthermore, the researcher

acknowledges and is humbled by her privileged status as a human being who is granted an opportunity to access higher education to pursue a terminal degree.

Summary

Researching vulnerable persons and groups requires a level of sensitivity and knowledge of the implications for undergoing such study. It is important to recognize and understand that the scope of the study is not shaped nor influenced by ignorant/narrow perceptions of such populations. Likewise, it is equally vital to avoid posturing minorities and indigenous peoples in a stance of the “Other.” Similarly, both critical discourse analysis and interpretive policy analysis—methods of content analysis—are also dependent upon the preparation and training of the researcher. The application of complementary approaches to CDA and IPA in this study, supported by the “local knowledge” the researcher brings to the analyses, ensures that only what is interpreted directly from the texts is attributed to the findings of the study. The integration of various discourses, including international human rights law, minority and indigenous studies, higher education, and critical theories provide an adequate balance to the study, particularly since proponents of some of these discourses are sometimes at odds with one another (i.e., many critical perspectives analyzed here critique the “universality” of international human rights law discourses (which are also included in this study) and its relevance to “the oppressed”). Transparency of the process is central to the researcher-analyst’s interpretation.

The case study approach, as relevant within the international human rights context, is also suitable for a comparative cross analysis between national and international-level discourses on the rights of minorities and indigenous peoples’ access to quality higher education. Applying critical theories through CDA and seeking underlying meanings via IPA,

must be done so appropriately and with caution, in order to ensure that a well-balanced analysis—combining relevant human rights, higher education, and critical discourses and theories in addition to the researcher’s prior and growing knowledge of the subject—helps address issues of plausibility, credibility, and transparency. For this purpose, CDA and IPA methodologies were applied simultaneously at all times during the analysis of the national and international texts selected for this study. They each bring significant features to the questions of inquiry that complement one another. CDA relies on critical perspectives for analysis that help focus on the context and posture of indigenous and minority populations that are often absent or underrepresented at national and international levels of discourse. IPA, on the other hand, focuses on the exploration of meaning within human rights and education policies and laws at the national and international levels that are always or most often drafted by dominant or majority representatives within society, and it also highlights the importance of the role of the researcher as contributing knowledge and interpreting the texts. Nonetheless, it is clear that CDA and IPA, individually and collectively, pose challenges and limitations—sometimes unavoidable, but most can be minimized, especially with the application of a well-integrated framework of theories and researcher insight that complement one another, strengthening their inherent weaknesses.

Chapter 4: Barriers and Obstacles to Higher Education Minority Groups and Indigenous Peoples Face

“ . . . [O]ver the past three years I have travelled to countries in practically every region of the world. I have talked extensively to people who belong to disadvantaged minorities on every continent. When I ask them to tell me their greatest problem, their most deeply felt concern, the answer is always the same. They are concerned that their children are not getting a quality education because they are minorities. They see educating their children as the only way out of their poverty; their under-dog status, their isolation.”

—Gay McDougall (2009)

Introduction

In the words of former UN Independent Expert on Minority Issues, Gay McDougall, even the most marginalized peoples in the world are concerned about the lack of quality education they have access to, recognizing the capacity and potential that access to quality education could have in liberating and advancing themselves and their communities. Clearly, there are numerous interconnected factors that prevent minorities and indigenous peoples from accessing quality higher education (some of which were discussed in Chapter 2), which are mostly systematic, resulting in poverty, “their under-dog status, their isolation.” While this study aims to highlight how national and international discourses target the higher education of indigenous peoples and minorities through law and policy adoption, it would be negligent of the researcher not to address the contextual minorities and indigenous peoples. This chapter includes discussions on: the definitions of minorities, indigenous peoples, and higher education in the international human rights context; some background on barriers minorities and indigenous peoples face in accessing quality higher education at the national level and the international call for “special measures” that aim to address such barriers. Chapter 4 also presents the historical and contemporary climates of Brazil, Iran, and New Zealand relative to barriers in the access to higher education and the current state of higher

education affecting their minority and/or indigenous populations, especially those relevant to this study.

Definitions of Minority Groups, Indigenous Peoples, and Higher Education within International Discourse

International instruments are created and adopted in order to maintain a universal standard of civil, political, economic, social, and cultural rights worldwide in an attempt to maintain an idea of equality and unity in diversity. Specific diverse attitudes within the world, however, also contribute to the differing views of how human rights are defined, and subsequently, how they should be protected. Prior to delving into the analyses of the instruments and guidelines regarding minorities and indigenous peoples' access to higher education, this section briefly introduces how and in what contexts minorities, indigenous peoples and higher education are understood in international human rights law discourse.

Minority Groups

Within the spheres of international human rights and law, minority groups are classified as belonging to four particular identity categories—ethnic (oftentimes substituting for racial classifications), nationality, linguistic, and religious. These four contemporary minority group classifications were initially introduced in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

A formal definition regarding who and what minority groups embodied preceding and following the drafting and adoption of ICCPR had not been adopted. Aware of this oversight, in 1977, Francesco Capotorti, Special Rapporteur²⁹ of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, proposed the following definition of minorities:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (Office of the High Commissioner, 2010, p. 2).

Although there are some critiques of Capotorti's definition, particularly regarding the “numerical” characteristic of minority groups and determinants of national identity of minority groups,³⁰ there is significant weight attributed to the status of minorities being of a “non-dominant position.” Even in some cases, there are groups that comprise the majority within most of a particular state and are also considered to be a minority within a specific region of said state. “Inspired by the provisions of article 27 of the [ICCPR], the Declaration on the Rights of Peoples Belonging to National or Ethnic, Religious and Linguistic

²⁹ Special rapporteurs are responsible for inquiring into State violations of human rights and to intervene on specific issues or urgent situations (e.g., Special Rapporteur on the Rights of Indigenous Peoples, Special Rapporteur on the Right to Education, etc.). They, therefore, play an important role in the protection of human rights. Special rapporteurs are independent, sit individually and cannot be appointed beyond a six-year term. Their mission is to study and draft a report on countries' situation about a particular human right issue they are specialized in.

³⁰ Although most minority groups are numerically a minority, there are cases in which there are exceptions. In South Africa, for example, Afrikaners of European descent comprise approximately five percent of the total population (Census 2011, 2012), but they are significantly placed at both a socioeconomic and political advantage in comparison to the numerical majority black South African indigenous population.

Minorities was adopted in 1992. Like its binding ICCPR predecessor, however, this non-binding declaration did not propose nor expound on the minority group classifications presented in Special Rapporteur Capotorti's proposed working definition. Nonetheless, the Declaration on the Rights of Peoples Belonging to National or Ethnic, Religious and Linguistic Minorities confirmed that the emphasis would be on protecting "the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" (United Nations General Assembly, 1992).

Furthermore, in spite of the four main minority identity classifications that exist, practitioners and scholars alike acknowledge that intersectional discrimination based on one or more such classifications, as well as others (e.g., sex/gender, economic status, disability, sexual orientation) is just as (if not more) problematic. The challenge, therefore, in identifying and classifying minorities has never been internationally—let alone, internationally—standardized. Based on the socio-historical context of the establishment of the nation-state or territory, their demographics may vary ethnically, racially, linguistically, nationally, and so on. There are also discrepancies between how states identify their minorities and how minorities identify themselves, for example. States are required to recognize minority status in order to support and advocate on their behalf, but it is not up to states alone to identify such classifications. As a matter of fact, the unique duality of minority identity in international human rights law is that people belonging to minority groups voluntarily desire to maintain their minority identity by identifying and defining their own status as a minority; international human rights law upholds self-declaration for minorities and indigenous peoples. However, some states deny the existence of these populations

within their national boundaries, and due to the fact that there is no universally agreed-upon definition of these persons and groups in international human rights law, the right to self-identification has yet to be fully recognized and implemented (more on this issue is discussed in chapter 6). This also holds true for people belonging to indigenous groups. The United Nations upholds these principles of “identification” and “preservation,” and these mutually-dependent principles resonate in the classification and recognition of minority groups and indigenous peoples alike, but there are also some unique distinctions between the two groups.

Indigenous Peoples

A frequent question that arises regarding minority group identification is the status of indigenous peoples and how they fit into the classifying and defining of groups/peoples. Are indigenous peoples classified as minority groups, for instance? As is the case for minorities, indigenous peoples are not understood nor defined universally. So while there is no international definition that is universally agreed upon, international human rights discourse reveals that the status of indigenous peoples is unique, and although they can be classified as minorities, there are aspects of indigeneity that place indigenous peoples in a separate category altogether. There are specific United Nations mandates and mechanisms in international law, which allow indigenous peoples to protect their rights, which will be explained further in this section. So clearly, there are significant distinctions that must be highlighted regarding the particular case of indigenous peoples.

In his research entitled “Study on the Discrimination Against Indigenous Peoples,” Special Rapporteur José Martínez Cobo (1983) proposed a “working definition” of people of indigenous descent:

[I]ndigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (UN Commission on Human Rights, 1986).

Cobo's interpretation of indigenous peoples parallels the far-too-common qualities of minority groups within "non-dominant positions" and marginalized communities. He also emphasizes the *ethnic* identity of indigenous peoples and their historical association with colonization as it connected to territories—to ancestral land ownership. The final lines of Cobo's working definition also suggests that indigenous peoples have an identity that is distinct from any other group of peoples—including that of minority groups—and therefore, this distinction must be recognized accordingly. Unlike Capotorti's proposed definition of minorities, however, Cobo's definition specifies legal sovereignty of indigenous peoples.

This distinctive quality of indigenous peoples was "internationally" recognized over 25 years prior to Cobo's report. Since 1957, international law standards have been implemented for indigenous peoples, specifically through the adoption of the Indigenous and Tribal Populations Convention, 1957 (No. 107) (International Labor Organization, 1989). Regarding this Convention, the International Labor Organization (ILO) (2013) clarifies that it "does not define who are indigenous and tribal peoples," but rather, "It takes

a practical approach and only provides criteria for describing the peoples it aims to protect. Self-identification is considered as a fundamental criterion for the identification of indigenous and tribal peoples...” In the preamble of the C169 Indigenous and Tribal Peoples Convention, 1989, it is noted that “the distinctive contributions of indigenous peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding” is recognized, and Article 1 of the Convention further highlights the uniqueness of indigenous peoples as identifying indigenous peoples as:

- (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

So these dual unique qualities which distinguish indigenous peoples from other populations—having disparate cultural and socioeconomic statuses that are regulated by sovereign and/or state laws and having descended from indigenous lineage and ancestors now living on colonized land—are indicative of how indigenous peoples have distinct identities from peoples belonging to minority groups. According to the Indigenous and

Tribal Peoples Convention, 1989, however, international law regarding the rights and protection of indigenous peoples is also centered on the twin values of “self-identification” and “self-preservation,” indicating that “[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply” (International Labor Organization, 1989). Thus, self-declaration is vital to the identification and therefore the protection of indigenous peoples based on the two criteria presented above.

Higher Education

The World Declaration on Higher Education for the Twenty-First Century was introduced and its anticipated scope of inter-generational and global benefits of higher education were introduced in chapter 1. In the World Declaration on Higher Education, higher education is described as “all types of studies, training or training for research at the post-secondary level, provided by universities or other educational establishments that are approved as institutions of higher education by the competent State authorities” (UNESCO, 1998). Aside from the World Declaration on Higher Education, there is no other international instrument—binding or non-binding—that is exclusively dedicated to higher education. The Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, however, does offer a broad definition and purpose for higher education, which reads:

Higher education should comprise civic training and learning activities for all students that will sharpen their knowledge of the major problems which they should help to solve, provide them with possibilities for direct and continuous action aimed

at the solution of those problems, and improve their sense of international co-operation (UNESCO, 1974).

The purpose of higher education offered in this Recommendation reveals a broad understanding that its role is twofold—to advance the knowledge of society and to apply that knowledge to solve the problems within society. Despite the significant capacity of higher learning mentioned here, most other declarations, recommendations, and treaties (conventions and covenants) usually make general references to education rather than to higher education in particular, but this will be analyzed further in this chapter. In order to understand the meaning and significance of higher education within international law, then, it would be logical to learn the definition of the broader connotation of *education* within international law.

While the ambiguity of definitions of minorities and indigenous peoples also resonate in other subjects of international human rights law, the clarification of higher education (or simply education, for that matter) is clearly not an exception. The Convention Against Discrimination in Education places more emphasis on defining “discrimination” and offers little to no acknowledgement of the meaning of education. The UNESCO Recommendation Concerning Education for International Understanding implications for education are: “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge” (UNESCO, 1974). International instruments discussed in this study (and even those omitted from this study) fall short of including definitions about what education and the right to education actually means, and therefore, what they entail. UNESCO’s

establishment of the International Standard Classification of Education (ISCED) was to establish a more comparable or standardized measure of education at various levels through both formal and non-informal structures. The ISCED is responsible for facilitating the “comparisons of education statistics and indicators across countries on the basis of uniform and internationally agreed definitions,” which aims to be a promising advancement in comparative international education statistics given that most of UNESCO’s educational data is obtained through quantitative and qualitative methodologies that often vary from State to State (UNESCO, 2012). The definition of an “education program” was revealed in ISCED’s most recent report:

[A] coherent set or sequence of educational activities or communication designed and organized to achieve pre-determined learning objectives or accomplish a specific set of educational tasks over a sustained period. Objectives encompass improving knowledge, skills and competencies within any personal, civic, social and/or employment-related context. Learning objectives are typically linked to the purpose of preparing for more advanced studies and/or for an occupation, trade, or class of occupations or trades but may be related to personal development or leisure. A common characteristic of an education program is that, upon fulfilment of learning objectives or educational tasks, successful completion is certified (ISCED, p. 7, 2011).

This definition provides a broad, yet succinct explanation of what education programs might contain, and the key terms mentioned in this definition—“educational activities,”

“communication,” “learning,” “organized,” “sustained,” and so on.³¹ The ISCED definition of education, therefore, is an example of a contemporary transition taking place towards the promotion and development of a “universal” definition of education for assessment, monitoring, and evaluation within international law. ISCED also emphasizes that education is not limited to formal schooling or learning.

One of levels of education ISCED has expanded upon for the UNESCO Institute for Statistics is tertiary education, “providing learning activities in specialized fields of education. It aims at learning at a high level of complexity and specialization. Tertiary education includes what is commonly understood as academic education but also includes advanced vocational or professional education,” and it also comprises research and technology-based institutions (UNESCO Institute for Statistics, 2011, p. 46). ISCED distinguishes tertiary or higher education for the formal degree options it offers (bachelors, masters, doctoral, and/or their equivalent), and the “content of programs at the tertiary level is more complex and advanced than in lower ISCED levels” (pre-primary, primary and secondary levels of education) (UNESCO Institute for Statistics, 2011, p. 46). The distinction between higher learning and lower ISCED levels are based on the level and degree of content and rigor that higher education requires, as well as the expected outcomes of successful matriculation and completion of study at a higher education institution.

Even within international law, however, a universal understanding and recognition of higher education is still a work in progress, especially when addressing questions of discrimination in access and quality for minorities, indigenous peoples, and other vulnerable

³¹ Refer to <http://www.uis.unesco.org/Education/Documents/isced-2011-en.pdf> for definitions.

groups. For instance, the Inaugural Session of the United Nations Forum on Minority Issues held at Palais de Nations in Geneva, Switzerland was themed “Minorities and the Right to Education.” In a concept note drafted for the Inaugural Session, former UN Independent Expert on Minority Issues, Gay McDougall, and Forum Chair and former member of European Parliament, Viktória Mohácsi, expressed that “[e]nsuring equal access to education is one of the most serious challenges for minorities and States alike, and also offers one of the greatest opportunities for the advancement of the full rights and freedoms of persons belonging to minorities.” (OHCHR, 2008, p. 1). Indigenous peoples were not specifically referred to in this concept note—most likely since a separate Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) exists that addresses the issues of indigenous peoples, including the right to education. Nonetheless, there are several initiatives and programs that specifically target access to education for indigenous peoples by UN agencies, international non-governmental organizations (INGOs), civil society organizations, and community groups within and/or in collaboration with indigenous communities. In addition to the Independent Expert on Minority Issues and EMRIP, there are also several other issues that mandate-holders address that would offer a more holistic approach to monitoring and securing the civil, cultural, economic, political and social rights of minorities and indigenous peoples such as the right to education; extreme poverty; and contemporary forms of racism, racial discrimination, xenophobia and related intolerance, for example. Although some recommendations are offered at the conclusion of this study, the effectiveness and success of such programs, however, are not analyzed here, particularly since the purpose of this study is to analyze the content and language of policies and not their actual practice.

Barriers and Special Measures to Access Quality Education for Minority Groups and Indigenous Peoples

Education of vulnerable persons and groups is often an oversimplified phenomenon, particularly since it is more complex than it appears. Tuck (2009) speaks to the victimization or tragedy narratives of marginalized peoples and groups, and the educational experiences are no exception. Some discourses project the blame of failure in education upon minorities and indigenous peoples for being incompetent and lacking commitment to attaining and successfully advancing within higher levels of learning or that *culture* is to blame in preventing them to access quality higher education (Fanon, 1976; MRG, 2009; Ryan, 1971). What has been overlooked, however, is the inherited “culture” of systematized inequality that is mirrored in educational systems, resulting in dichotomous disparities between poor and wealthy, brown or black and white, man and woman, and so on. Such constructed dichotomies result in disparities in education quality and access, and a lack of disregard for cultural diversity and identity preservation. In other cases, it becomes a highly sensitive topic of discussion, especially since history has shown that education has often been used to dehumanize, oppress, uproot, and obliterate minorities and indigenous peoples. According to Cole, for instance (2011), “Spiritual, cultural, and linguistic death replaced corporeal death as policy goals, and schools served as one of the primary grave diggers” for indigenous peoples in Australia, Canada, New Zealand, and the United States (p. 49). While Cole’s metaphor attesting to the abuses of education and schooling are accurate, especially regarding the fate of indigenous and minority populations, education also has the capacity to empower, liberate, and advance the development of disadvantaged and vulnerable groups (Fanon, 1967; Freire, 1970; Mandela, 2003; Nyerere, 1979). At the national level, most

minorities and indigenous peoples facing obstacles in advancing to tertiary education, usually only have access to poor quality education at the primary and secondary levels, and this is understood to be a global epidemic (UNESCO, 1995). For this reason, international human rights institutions provide a platform for states to reconcile these discrepancies at the national level.

Special Measures in International Law

In an effort to “overcome past discrimination or address persisting inequalities” in areas such as education, international human rights law permits differential treatment, especially by calling upon states to implement measures. By “measures,” international human rights law discourse refers to

the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programs and preferential regimes in areas such as employment, housing, education, culture, and participation in public life for disfavored groups, devised and implemented on the basis of such instruments (UN, 2010, p. 9).

In chapter 2, the international concept of “special measures” was briefly introduced. Special measures are introduced in several international instruments as a means to provide states with options to address unequal and inequitable conditions minorities and indigenous peoples face. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) calls for special measures

for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to

ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms (UN, 1965, Article 1).

In some instances, such as in the case of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states are permitted to implement “temporary special measures,” which are intended to accelerate de facto equality between men and women (UN, 1979, Article 4). In its general comment No. 18 on non-discrimination, the Human Rights Committee held that States parties are sometimes required to “take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant” and that “such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population . . . as long as such action is needed to correct discrimination in fact” (UNHRC, 1989).

The Committee on the Elimination of Racial Discrimination (CERD) (2009), in its general recommendation, No. 32, provided further guidance on the implementation of special measures under Article 1 of ICERD as well as on the meaning of “special measures” (CERD, 2009). The committee maintained that special measures are relevant to all rights: “the list of human rights to which the principle applies under the Convention is not closed and extends to any field of human rights regulated by the public authorities in the State party [...] to address racial discrimination ‘by any persons, group or organization’.” In some countries, these special measures are equivalent to terms such as “affirmative measures,” “affirmative action,” or “positive action.” There is a clear distinction between states’ obligations to take special measures and their obligations to secure human rights and fundamental freedoms on a nondiscriminatory basis to peoples and groups within their

jurisdictions. Understanding and abiding by this distinction is a general obligation flowing from the provisions of ICERD as a whole and integral to all parts of the Convention. The planning and application of special measures must also be “appropriate to the situation to be remedied, be legitimate, be necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary” (UN, 2010, p. 10).

Furthermore, the Committee (2009) also reported that “special measures should not be confused with specific rights pertaining to certain categories of person or community,” such as, for example, the rights of indigenous peoples or persons belonging to minorities to enjoy their own culture, profess and practice their own religion, and use their own language, and so on. “Such rights are permanent rights,” the Committee continues, “recognized as such in human rights instruments, including those adopted in the context of the United Nations and its agencies” (2009). Therefore, states should understand the distinctions between special measures and permanent human rights in their laws and policies. This distinction makes it clear that minorities and indigenous peoples are entitled to permanent rights, while *also* enjoying the benefits of special measures. These temporary special measures also apply to higher education systems and institutions (and all other levels of formal education), providing opportunities for minorities, indigenous peoples, and other vulnerable persons and disadvantaged groups to access quality higher education due to existing factors that either directly or indirectly discriminate against them and/or pose unequal opportunities to and within higher education.

Minority and Indigenous Cases in Brazil, Iran, and New Zealand

This study highlights three higher education policy-or-legislation-related cases in three countries—Brazil, Iran, and New Zealand. The cases highlight affirmative action policies in Brazil for Afro-Brazilians and indigenous peoples (who also represent the majority of the poorest in the country); the Islamic Republic of Iran’s systematic policy barring Bahá’ís from studying or teaching at higher education institutions in the country; and New Zealand’s establishment of wānanga and indigenous knowledge frameworks in traditional higher education institutions for Māori students.

Afro-Brazilians and Indigenous Peoples in Brazil

Historical and Present Political, and Social Climate

Although most of Latin America was colonized by the Spaniards, Brazil was colonized by the Portuguese. Initial relations with the indigenous population were friendly, but colonists were eager to exploit trade, particularly wood and sugar, which eventually provoked and intensified conflict. Consequently, massacres and slavery, which almost exterminated the coastal Tupi tribe, initiated a pattern repeated over the next 500 years. Rival colonial powers, France and the Netherlands, exploited existing hostilities between indigenous groups. As many colonists have historically done, they introduced dysentery, smallpox, influenza, and plague to the native communities. Epidemics of these European diseases swept through the *reduções* (settlements) instituted by Jesuit missionaries, killing many thousands of indigenous and tribal peoples within a few decades. According to Survival International (2013), the indigenous population of Brazil is less than seven percent

of what it was in 1500. It is thought that during pre-colonial times, there existed up to 1,000 distinct tribes, while today only an estimated 197 of them remain.

After the decimation of the local indigenous population in the seventeenth century, an estimated 3.65 million Africans were enslaved and taken to Brazil, and the majority of the Africans were brought to Brazil's first capital, Salvador da Bahia. Urban slave labor differed from plantation life; enslaved persons were not passive victims of the system and many escaped to discover their own *quilombos* (settlements founded by formerly enslaved Afro-descendants) (MRG, 2012). Today, those quilombos are nearly equivalent to *favelas*, except in the case of the former, *quilombolas* (intergenerational residents of quilombos) "outright own their land," whereas in favelas, most do not "legally" own their land (Plantas, 2014). According to the National Institute for Colonization and Agrarian Reform, however, the federal agency that manages quilombo land titling, there have been delays in the processing of granting property owners their land titles due to the "necessity of negotiating a settlement and indemnification" with land owners (Plantas, 2014).

Prior to abolishing slavery in 1888, the Portuguese authorities promoted miscegenation as a way of ensuring a Portuguese presence in under-populated regions. However, as fear of a rapid increase in the Black population grew, the Portuguese subsequently opened the country to white immigrants, who were given preference over black people in jobs, housing and education. For this reason, the notion of racial/ethnic identity in Brazil today is quite complex, and much has to do with the long history of interracial/interethnic marriage in the country (as there were no anti-miscegenation laws in Brazil unlike those under Jim Crow in the United States), resulting in a population that nearly

represents a “rainbow nation.” The miscegenation of indigenous and Afro-descendants does not at all suggest that the cruel and oppressive forces of racism and slavery were invisible, however. This point indicates that racial and ethnic classifications are not as discernible as one might think.

However, disparities across class lines are definitely evident, as the country’s population—regardless of race or ethnic background—is characteristic of a very expansive gap between the wealthy and poor with a middle class nested in-between. Afro-Brazilians account for approximately half of the national population—comprising, for the first time, the majority, but their economic participation is only 20% of the gross domestic product (GDP) (IBGE, 2010). Unemployment is 50% higher among Afro-Brazilians than among Whites, and Blacks who are employed earn less than half of what whites earn. The majority of Afro-Brazilians—nearly 80%—live below the poverty line compared to 40% of Whites; and the life expectancy of African-descendants is only 66 years compared to 72 years for European-descendants. Half of all Blacks are illiterate, while less than 20% of Whites are unable to read, according to Instituto Brasileiro de Geografia e Estatística (IBGE) or the Brazilian Institute of Geography and Statistics (2010).

Many Afro-Brazilians and indigenous peoples are becoming aware of the degree to which their socioeconomic, cultural, political, and religious identities have been suppressed. Many hundreds of black consciousness, civil, indigenous, and land rights organizations are actively at work today. Educafro, for example, is a grassroots advocacy group that calls for the inclusion of Blacks and the poor, particularly within public universities (and some private universities on a scholarship basis) to promote the “empowerment and social mobility for

the poor and Afro-Brazilian population” (Educafro, 2014). Coordenação das Organizações Indígenas da Amazônia Brasileira (COIAB) (“Coordination of the Indigenous Organizations of the Brazilian Amazon”) claims to be the largest indigenous organization in Brazil, comprised of 75 member organizations from the nine states of the Brazilian Amazon. COIAB was founded to serve as the instrument for autonomy and representation of the basic rights (i.e., (land, health, education, economy and intercultural) of indigenous peoples of the Brazilian Amazon (COIAB, 2014).

Higher Education in Brazil

In November 2009, the Brazilian Congress passed a constitutional amendment calling for universal education for Brazilians from 4 to 17 years of age, but former UN High Commissioner for Human Rights, Navi Pillay (2009) emphasized that “a truly universal secondary education system is essential if there is to be major improvement” in addressing the country’s vast discriminatory practices and high rates of poverty affecting indigenous and Afro-descendant populations. Most public primary and secondary schools are overpopulated (with approximately 40-50 students per classroom), poverty rates among public school participants is extremely high, and nearly 80% of the country’s population (predominantly among indigenous and Afro-Brazilians) are either completely or functionally illiterate regardless of having access to education, as the quality of Brazil’s public primary and secondary schools is substantially low (Novais, 2011). Only four percent of Afro-Brazilians between the ages of 18 and 24 have attended a university, compared to 12% of whites (MRG, 2012). Consequently, numbers of universities—varying estimates between “dozens of public and private universities” (Romero, 2012) and “at least 80 public” universities (Hernandez, 2013)—across the country adopted varying affirmative action policies.

However, proponents of race-based affirmative action believed that national action would be imperative in resolving the immense gap in higher education enrollment. Indigenous higher education enrollment rates are difficult to find, as they comprise less than one percent of the population. However, according to a World Bank report (2009), higher education enrollment rates for indigenous peoples averages at 43.4% in urban areas and 0.5% in rural areas.

Gaining momentum after the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, race-based affirmative action policies slowly began emerging within public higher education institutions in Rio de Janeiro (Daflon, Júnior, & Campos, 2012). On August 29, 2012, Brazilian President Dilma Rousseff signed Law No. 12,711 (Lei No. 12.711, de 29 de Agosto de 2012) known as Lei de Cotas or the Quotas Law, which reserves 50% of the places at federal universities for students who attended a public school during their entire secondary schooling career (ensino médio). For federal technical institutions at the intermediate level, 50% of the spaces must be occupied by students who attended elementary and middle school (ensino fundamental) at a public institution. Students from low-income families are entitled to occupy 50% of both types of vacancies (i.e., 50% of the 50% quotas for universities and technical institutions). These quota reserve goals are to be implemented gradually and achieved by 2016 (Telles & Paixão, 2013). Article 7 of Lei de Cotas establishes that the government must revise, within ten years from the date of publication of the law, the special program for admission of black, mulatto (mixed race), and indigenous students, as well as of those who have completed their high school education in public schools and at institutions of higher education. The federal universities initially must reserve, each year, at least 25% of the established quota of reserved

places and will have four years to implement the full quota. The admittance criteria will be the grade obtained by the student on the National Education Exam (Exame Nacional do Ensino Médio) (Soares, 2012). Critics argue that affirmative action laws—as they are written now—fall short of the socioeconomic realities of the targeted populations. Apparently, Lei de Cotas only impacts 25% of the current Afro-descendant population, because the vast majority of Afro-Brazilians have less than 11 years of formal schooling; 40% of blacks have completed less than seven years of schooling, and are therefore, ineligible for college admission, but the government was convinced that federal action had to be taken (Soares, 2012). The affirmative action-based quotas continue to engender fierce debates across the country.

Bahá'ís in Iran

Historical and Present Political, and Social Climate

Out of a population of approximately 76 million people, Persians comprise the largest ethnic group in Iran (approximately 61%). Other ethnic minority groups include Azeris (16%), Kurds (10%), Lur (6%), Baluchi and Arabs (both 2%), Turkmen and other Turkic tribes (2%), and other nomadic peoples comprising nearly one percent of the total population. Other minorities include Armenians and Assyrians, as well as an Afro-Iranian minority. The main religions in Iran are: Islam (98%)—89% of which practice *Shi'a* Islam—strongly dominated by the Twelver Ja'fari School (referred to as *Ithna'ashari* in Arabic), and a minority of followers of Sunni Islam, and other Islamic groups such as Isma'ili Islam and Ahl-i Haq. Other religious groups include Bahá'í, numbering 300-350,000, Zoroastrians

(Mazda-yasnie) (30-35,000), Jews (25,000-30,000) and Sabeen Mandaens (5,000 - 10,000) (United States Commission on International Religious Freedom, 2015).

Historically, Persia was far more diverse than it is today, because of its significant size as an ever-growing empire. It was once considered to be one of the most justly ruled empires among ancient civilizations, particularly at the beginning of the Achaemenid Empire under Cyrus II or “Cyrus the Great,” who ruled sometime between 600 B.C. and 530 B.C. In spite of his comprehensive plan to expand the empire, Cyrus II was recorded to have respected the diverse and unfamiliar cultures and religions of the peoples and lands he conquered. Persia is also noted in “Western” history as the antagonist foe of the Greek city states during the Greco-Persian Wars, for the emancipation of slaves including the Jewish people from their Babylonian captivity, and for instituting infrastructures such as a postal system, road systems, and the usage of an official language throughout its territories. The empire had a centralized, bureaucratic administration under the emperor and a large professional army and civil services, inspiring similar developments in later empires. It was not until the end of the Safavid dynasty and beginning of the Qajar dynasty, in the eighteenth century, that slavery was introduced (Curtis & Stewart, 2005). The tolerance for diversity that existed during the early years of the Persian Empire dramatically shifted as new leaders attained political power over time. Between the end of the Qajar dynasty and the beginning of the subsequent Pahlavi dynasty, a new religious movement had emerged that tested the forbearance and political agendas of those regimes. Followers of the Bahá’í Faith, an independent religion founded by Bahá’u’lláh in the nineteenth century endured the greatest degree of persecution known to Persian and Iranian histories.

The rise of the Islamic Revolution of 1979 was remembered among many as one of the most impacting events of the twentieth-century. It was a time when Western powers were challenged and tested, but in the same instance, it brought a new wave of trials for the Iranian Bahá'í community. Bahá'ís make up the largest religious minority in Iran. For more than 25 years, the government of the Islamic Republic of Iran has refused the entry of Bahá'ís into universities and colleges throughout the country. This, of course, is one of the many tests members of the Bahá'í community have faced under new rule. As of 1979, more than 200 Bahá'ís have been killed and tortured, hundreds have been arrested and imprisoned, and thousands have had their properties and businesses taken away from them. Many Bahá'ís have been fired from their jobs while some had pensions terminated. Up to now, Bahá'í holy sites and gravesites are still being destroyed and desecrated. One of the government's latest attempts in thwarting the progress and stifling the development of the Bahá'í community has been through the methodical barring of higher education to Bahá'í students and teaching jobs to Bahá'í faculty throughout the country. Since the inception of the Bahá'í Faith in the mid-nineteenth century, however, adherents of the Bahá'í community—and the Bábí religion that directly preceded it—in Iran have been systematically persecuted by the Iranian government.

According to Article 13 of the Islamic Republic of Iran's Constitution, *dhimmi* communities or “people of the dhimma or contract” or “People of the Book” (i.e., people of God, followers of God) solely include: “Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.” (Islamic Republic of Iran, 1979).

Although comprising one of the largest religious minorities in the country, clearly Bahá'ís are not considered to rank among “people of the dhimma.” Unlike, Zoroastrian, Judaic, and Christian traditions, however, the Bahá'í Faith came *after* Islám. While their relationship with the government is one of obedience and respect, the Iranian Bahá'í community continues to face discrimination and basic violations of their rights as an attempt to thwart the progress and development of the Bahá'ís. Although officials of the Islamic Republic of Iran and others have claimed (and continue to claim) that Bahá'ís have had ties to foreign powers, and were agents of Russian imperialism, British colonialism, American expansionism, Zionism, as well as being responsible for influencing the policies of the previous Shah of Iran—Mohammad Reza Pahlavi (Ghanea, 2003), there is no documented or proven evidence to support these claims. These accusations also reinforced the notion that Bahá'ís are “traitors” to their country and “agents of colonialism” (Bahá'í International Community, 2008). It is actually unlawful for Bahá'ís to engage in partisan politics of any kind. Thus, it is clear Bahá'ís are individually and collectively targeted due to their religious beliefs and identities as Bahá'ís.

Higher Education in Iran

The history of persecution targeting the educational attainment and achievement of the Bahá'í community in Persia extends back to the 1930s, when Reza Shah Pahlavi enforced the closing of all Bahá'í-inspired *tarbiyyat* schools. Tarbiyyat schools focused on moral education and character development and were attended by children and youth who were raised from households of diverse faiths, beliefs and philosophies, and they were also segregated by sex as was customary in Persia at the time. They were the only schools in Persia where children and youth of all religions and ideologies were found to be educated

under one roof. Even Persian governments that harshly persecuted Bahá'ís still kept tarbiyyat schools open because they recognized their value and benefit to individual, family, and community development—society overall. Tarbiyyat schools were all consequently closed down by the government in 1934 (Shahvar, 2009).

Fast forwarding 50 years to the mid-1980s onward, it became rather apparent that the efforts of the Iranian government were aimed at eradicating the presence of the Bahá'í community in Iran and globally (ISRCC, 1991). A secret memorandum issued in 1991 by the Islamic Republic of Iran's Supreme Revolutionary Cultural Council (ISRCC) was discovered by the UN Special Rapporteur on freedom of religion or belief. The memorandum laid out a national “policy” plan that systematically denies Bahá'í students access to all public and private higher education institutions in Iran: “They must be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Bahá'ís” (ISRCC, 1991). Although the state's policy to keep Bahá'í students out of private and public higher education institutions was officially implemented in 1991, the Iranian government had been systematically denying Bahá'í students and faculty opportunities to study and work in higher education institutions since the late 1970s. Due to international pressure led by the Bahá'í International Community (BIC), a permanent office at the United Nations, regarding the treatment of Bahá'ís in Iran, the government of Iran has made some efforts to moderate its previous actions against the Bahá'ís. Support from the Bahá'í International Community at the United Nations and national and local Bahá'í communities across the globe have helped raise awareness of the trials faced by their Bahá'í cohorts in Iran. Additionally, despite popular belief, many Muslims sympathetic to the injustices persevered by the Bahá'ís in Iran are supporting their fellow citizens in the country.

Greatly due to growing international pressures, the mass killing and imprisonment of Bahá'ís came to a halt in the mid-1980s. However, isolated arrests and deaths are still occurring today. As the Bahá'í International Community (BIC) at the United Nations stated, “The government’s efforts to deny Bahá'í youth access to higher education perhaps most clearly demonstrate the lengths to which the Iranian government is willing to go in its campaign of quiet strangulation” (BIC, 2005).

Like many other countries around the world, in order to attend university in Iran, each candidate must take a national university entrance examination (in this case, it is known as the *concours*). Therefore, the approach or strategy the government has used in prohibiting Bahá'ís from higher education is rather simple. Until 2004, each individual taking the exam had to declare his or her religion, and coincidentally, the only boxes one could check for such identification purposes included: “Muslim,” “Christian,” “Jewish,” and “Zoroastrian.”

In 1987, Bahá'ís began to respond to their dilemma by establishing their own institution of higher education, which came to be known as the Bahá'í Institute for Higher Education (BIHE). BIHE offered classes in private homes, classrooms, offices, and laboratories throughout the country. Bahá'í professors and staff worked at the BIHE to serve the needs of young Bahá'í students who desired post-secondary school education and successfully passed the national entrance exam known as the *concours*. According to the Bahá'í International Community, “At its peak, the Institute enrolled more than 900 students.” However, the success of the BIHE has not occurred without difficulties. Since its inception, hundreds of BIHE faculty, staff, and students have endured arrests, imprisonment, interrogation, intimidation, and destruction of personal property. Bahá'ís involved with the BIHE “are falsely accused of espionage, conspiracy, instigating sedition,

and other illegal, anti-regime activities that threaten national security” (Bahá’í International Community, 2012). In May 2011, a series of raids of 33 Bahá’í homes led to numerous arrests and sentencing throughout the country. The Iranian government continues to impede the progress of the Iranian Bahá’í community, especially through its most obvious violation of denying young Bahá’ís equal access to institutions of higher learning.

Not only is the Iranian government’s systematic denial of Bahá’ís’ access to higher education a unique case, but their reaction—a peaceful establishment of a higher education institution—the BIHE—is unique, incomparable to any other response to purposeful oppression anywhere in the world. It is a peaceful and self-sustaining attempt to preserve the development of a community that is threatened to advance and progress. Rather than arise in disobedience or protest to the government, the Iranian Bahá’í community responded with what a *New York Times* article described as “an elaborate act of communal preservation” (Bronner, 1988) and what the Bahá’í International Community (BIC) (2011) referred to as “remarkably creative—and entirely non-violent.” Over time, the BIHE has been able to effectively adapt and transform itself in order to respond to the pressure and challenges of the Iranian government. Consequently, to remain “out of the reach” of Iranian officials, most of the day-to-day instruction of BIHE is done over the Internet through a secured server platform via a sophisticated online learning platform. The BIHE is still running today, therefore, and thanks to the advancement of technology, hundreds of courses are now offered online, which are taught by over 300 affiliated global faculty (AGF) from all over the world. The BIHE has “graduated” over 1,000 students thus far, many of whom have also become BIHE instructors. Although the BIHE is not an accredited higher education institution, international attention within the past two years has helped former BIHE

students be admitted to some of the “top” accredited universities around the world (Sattarzadeh, 2012). International advocacy efforts and academic support continues, particularly among academic administrators and faculty members, university and college students, filmmakers, celebrities and leaders, nongovernmental corporations, community service organizations, Nobel Peace Prize Laureates, and others from around the world have increasingly surfaced in shedding light and increasing international attention on the Iranian government’s injustices imposed among one of its largest religious minorities.

Māori in New Zealand

Historical and Present Political, & Social Climate

Formerly of the British Commonwealth, New Zealand’s governance and legislation post-independence is deeply influenced by the first colonial encounters with the indigenous population—the Māori of Aotearoa.³² The Treaty of Waitangi of 1840 marked the first “contract” between the British crown and Māori chiefs, dictating the role of the British in New Zealand, as well as the purchasing of Māori land from what was known as the Confederation of United Tribes, a group of 34 chiefs from the northern part of the country who signed a “Declaration of Independence” with the British in 1834 to establish a relationship based on trade.

New Zealand was not settled until around the eleventh century when there was significant migration from eastern Polynesia. The Māori culture largely developed in isolation from other Polynesian cultures and European influences. By the start of the nineteenth century, traders had sought to exploit New Zealand’s natural resources and missionaries had

³² Widely accepted and known today among New Zealanders as the Māori name for the country.

begun to evangelize *tangata whenua* (the people of the land). There was considerable settlement before New Zealand officially became part of the British Empire in 1840 (Brooking, 2004).

The Treaty of Waitangi was initially signed on February 6, 1840 by representatives of the British Crown, including Lieutenant-General-Elect Captain William Hobson and over 500 Māori chiefs, representatives from the Confederation of United Tribes from New Zealand. The aim of the treaty was to ensure equal rights to Māori, as well as acknowledgement of Māori land ownership and other property rights. However, the treaty did not prevent unscrupulous practice by Europeans seeking to obtain more land and consequent violence. Māori disillusionment and anger at subsequent European responses to the Treaty have underlain all, especially more recent attempts to gain greater self-determination and power. The increasing demand of white (*Pakeha*) settlers for land led to considerable conflict throughout much of the nineteenth century, especially in the North Island. Sporadic contact in the 1840s was followed by the New Zealand wars of the 1860s in the central and west coast areas of the North Island. Disease, violence and displacement greatly reduced the Māori population and by the 1890s their numbers had declined to about 40% of the pre-contact population size (Brooking, 2004). Today, Māori only make up a little over 14% of the national population, compared to 71% Whites or “Pakeha,” more than 11% of Asians, and nearly 8% Pacific Islanders or Pasifika (Statistics New Zealand Tatauranga Aotearoa, 2013).

Despite the displacement of Māori, the white population grew slowly. Similarly, the Māori population began to grow again, but only at a sluggish pace. Between 1945 and 1970, the annual rate of population growth increased significantly following a higher birth rate and

considerable immigration, especially from Polynesia and Western Europe (particularly, the U.K.) (MRG, 2013).

The legitimacy of the Treaty of Waitangi was questioned, however, since the two language versions of the Treaty (English and Māori) drafted by British missionaries varied in content and meaning and also contradicted traditional Māori customs. In 1975, a permanent commission was established by the New Zealand Parliament known as the Waitangi Tribunal. The primary role and function of the Waitangi Tribunal was to regulate government negligence and breaches committed by the British Crown of the Waitangi Treaty. Issues attendant on reconciliation between white settlers and the Māori community are examined by the Waitangi Tribunal, which was created by an Act of the New Zealand Parliament in 1975. The Tribunal allows the retrospective resolution of grievances. Its findings are not legally binding but the recommendations are generally respected by society (MRG, 2013).

Through the policy of biculturalism and the practice of the Waitangi Tribunal, New Zealand governments have sought to enable Māori development. Māori tribes (*iwi*) have developed programs for local development, but have often lacked the land and capital to implement them; much less attention has been given to the more intractable problems of urban Māori communities. Obtaining redress from the government for the wrongful invasion and confiscation of land has been a slow and bitter process. Changing Māori political and cultural strategies have drawn attention away from difficulties experienced by other migrant groups, especially Pacific Islanders.

Recent election campaigns have often involved the rights and 'special treatment' of minority groups, and the particular position of Māori continues to be debated in a range of

contexts. The cultural renaissance of Māori has received a mixed reception from other New Zealanders, while affirmative action programs to redress educational and social disadvantage have been more contentious, especially where Māori and Polynesian islander youth are over-represented in crime statistics (MRG, 2013). Interestingly, the indigeneity of Māori is not even recognized by the state.

The New Zealand government became one of only four countries³³ to oppose the United Nations Declaration on the Rights of Indigenous Peoples. New Zealand Prime Minister Helen Clark defended the decision, saying the Treaty of Waitangi and common law already protected New Zealand's indigenous peoples' right to lands, territories, and resources they have traditionally owned or used. Māori leaders, meanwhile, claimed they were “ashamed and outraged” by the decision (Smith, 2009). Māori representatives actively participate in international dialogues on the rights of indigenous peoples, including the inaugural World Conference on Indigenous Peoples (WCIP) held in New York City in 2014 (Sattarzadeh, 2014).

Higher Education in New Zealand

Until 1990, universities and polytechnics in New Zealand were clearly demarcated—universities were academic institutions and could award degrees, while polytechnics taught vocational and trade courses. Teachers trained at separate colleges. After education reforms in the 1990s, these two categories of higher education institutions competed for the same students, and other training institutions, such as wānanga, also expanded (Cole, 2011). Equivalent to Native tribal colleges and universities (TCUs) in the U.S., wānanga are state-

³³ Australia, Canada, and U.S. have also opposed signing the Declaration on the Rights of Indigenous Peoples.

funded Māori teaching and research institutions that are modeled on an ancient Māori institution of higher learning known as *whare wānanga*, focusing on the study of *mātauranga Māori* (Māori knowledge). Today there are five types of tertiary institutions in New Zealand: universities, polytechnics or institutes of technology; colleges of education, *wānanga*, and private higher education institutions—all of which are defined in the Education Act of 1989.

Despite the establishment of *wānanga*, the constant trickle of information supplied by governments and their departments does little to alleviate and improve the reality for Māori communities and for Māori participation in higher education. Smith (2009) has found that much of the “dismal state” of Māori achievement within the education system, and how Māori fail rather than succeed is a constant feature of the dominant culture’s control of media, political and social discourses. In addition, Te Puni Kokiri (2000) has identified that educational attainment for Māori affects their opportunities in “employment and income, with flow-on effects in housing, criminal justice and health” (p. 15). Therefore, it would seem that emphasis on education for Māori would support more positive outcomes for Māori throughout their lives, and *wānanga*, therefore, would be a crucial step in helping move in that direction.

Currently, there are only three *wānanga* in New Zealand—Te Wānanga o Raukawa, Te Whare Wānanga o Awanuiārangi, and Te Wānanga o Aotearoa. The first modern *wānanga*—Te Wānanga-o-Raukawa in Ōtaki—was founded in 1981 (Cole, 2011). *Wānanga* provide tertiary education to all *imi* (tribes) and other peoples or groups wishing to study in a uniquely traditional, indigenous environment that is administered according to *tikanga Māori* (Māori customs). There is a strong emphasis on use of Māori language and protocol in all disciplines and areas of study. In an attempt to make courses as accessible as possible and

accommodating to various schedules, study can be undertaken on a full-or part-time basis, as well as in the evenings and on weekends. Almost 60% of students enrolled in wānanga are Māori, and there is a 70% retention rate among Māori students; and 36% of Māori students pursue higher levels of education beyond a bachelor's degree (Tertiary Education Commission (TEC), 2013). On average, 78% of Māori students complete their courses and qualifications. The number of students enrolled at each wānanga varies, however. In 2013,³⁴ Te Wānanga o Raukawa enrolled 2,240 students (94% Māori); Te Whare Wānanga o Awanuiārangi had 5,000 students (92% Māori); and Te Wānanga o Aotearoa had approximately 31,900 students (51% Māori) enrolled (TEC, 2013).

Although three wānanga are currently established, there is much criticism regarding the current state of broader opportunities in higher education for Māori students in particular. To qualify for admissions to higher education in New Zealand, students must successfully complete of secondary education requirements, including completion of a Level 1-4 certificate and a Level 5-6 diploma. More than 33% of Māori ages 15 and older have no formal education qualifications at all. The percentages of Māori students ages 15 years and older who have completed the Level 1-4 certificate and the Level 5-6 diploma are 50.2% and 6.3%, respectively (New Zealand Census, 2013). The dramatic decline in completion rates between the number of students who completed the certificate and those who completed the subsequent diploma naturally yields a significantly small sample of Māori eligible for higher education. Māori comprise only 10% of the university student population; 23% of institutes of technology or polytechnical colleges; 18% of industry training organizations;

³⁴ New Zealand's Tertiary Education Commission statistics are only updated through 2013.

46% of “other tertiary education providers”; and 48% of the private training establishment sector. Thus, far more Māori are enrolled in vocational or trade-oriented institutions that have lower quality and achievement averages than traditional higher education institutions in the country (TEC, 2013). Māori education policy is perceived by some to be disconnected and fragmented (Cole, 2011; Smith, 2009). Therefore, New Zealand’s Parliament has been unsuccessful in incorporating and affecting the targeted population effectively and relevantly. At a national level, the Ministry of Education has been moving towards assisting *imi* in developing education strategies as part of its overall Māori education strategy. While this is a positive move, such initiatives are countered by government persistence on developing policy that still view Māori as homogenous (Brooking, 1998). What has been missing from making such policies effective for Māori, however, is the lack of implementation (Smith, 2009).

In many parts of the country the Māori language lost its role as a living community language in the post-war years. In the past decade, there has been a steady increase in the percentage of Māori language at all levels of education; at the same time there has been a renaissance in the teaching and learning of Māori language and culture, partly through increasing numbers of bilingual classes in primary and secondary schools. It is hoped, therefore, that this early start will strongly influence Māori language studies and use in other higher education institutions—not only wānanga. There have also been growing numbers of specifically Māori-language schools (Kura Kaupapa Māori), extending from pre-school to secondary level. This focus on education has contributed to arresting the decline in *Māoritanga* (Māori culture) that tended to follow urbanization. In 2004, Māori Television, a government-funded TV station committed to broadcasting primarily in the Māori language

(*te reo*), began broadcasting. Māori language enjoys the equivalent status to English in government and law. New Zealand's Education Act 1989 also introduced the requirement for long-term tertiary strategic goals that underline economic, social, environmental, and Māori (and other underrepresented groups') development.

Summary

Definitions of minorities, indigenous peoples, and higher education are sometimes ambiguous and open-ended. These definitions provide a foundation for states to embark on protecting the educational rights of their respective minorities and indigenous communities through an international perspective. Gaining a better understanding of the broader contexts of Brazil, Iran, and New Zealand reveals that the discrimination, inequality, and inequity that minorities and/or indigenous peoples have experienced in each of these countries can be traced back to historical strategies of systematized exclusion and marginalization. Afro-Brazilians and indigenous peoples in Brazil, Bahá'ís in Iran, and Māori in New Zealand have endured marginalization in cultural, economic, political, and social sectors of society—sectors that are inevitably interconnected. However, the contexts of Afro-Brazilians and indigenous peoples in Brazil and Māori in New Zealand are much more aligned than the case of the Bahá'ís in Iran, and even more so, the indigenous overlaps in Brazil and New Zealand are far more similar—not only due to socio-historical schemes of imperialism, colonialism, and racism, but due to economic indicators, as well as the consequences of mass genocide. For instance, unlike the case for Afro-Brazilians and indigenous peoples in Brazil and Māori in New Zealand, an assigned or acquired socioeconomic status is not relevant to the higher education policies implemented regarding the Bahá'ís in Iran (even though Bahá'ís from higher income households generally have far greater opportunities to access various

resources); their religious identity, however, is. Nonetheless, the right to access quality higher education for these vulnerable groups is clearly a matter of growing concern nationally and internationally.

Historically, the Brazilian government's extensively delayed investment in the educational sector resulted in an accumulation of social inequalities, which has consequently, led to a greater inequality in accessing higher education. Most of the elite universities—private and public—have been attended by White students from middle and upper-class households. Meanwhile, only 4% of Afro-Brazilians have pursued higher learning, and the percentage for indigenous enrollments is nearly negligible. In April 2012, Brazil set a new precedent for affirmative action policies throughout the country and the South American continent. Since adopting Lei de Cotas, which is set to be fully implemented in 2016, government officials project that the number of Black students in public universities “will jump nearly *sevenfold*, from 8,000 to 56,000” by 2016 (Rogers, 2012). However, these approximations tend to easily disregard the social constructs in which these unequal conditions have emerged to foster discourses on the requirement of race-and-class-based admissions policies in the first place. It is equally important to consider how a high level of quality is upheld and maintained across all public universities and colleges, while ensuring that students admitted through affirmative action legislation are well-prepared and educated to study at the tertiary level, especially primary and secondary education enrollment and matriculation rates among Afro-descendant and indigenous populations are glaringly low, as standards at lower levels of education are literally at the minimum level.

Despite socioeconomic and racial-ethnic disparities that do preside in the country, Iran has a vastly different story to tell. Traditionally, in Persian and Iranian cultures,

education is held in such high esteem, and hence, various governmental regimes have consistently made efforts to generously invest in educational outcomes. So it may not be surprising that the country has been undergoing a “brain drain” crisis over the past several years, losing billions of dollars annually due to emigration of high-level, formally-educated Iranians who cannot find jobs in Iran (Khajepour, 2014; World Bank, 2010). There is an irony, therefore, in that if education is so valuable, why is a country incapable of accommodating a growing, highly-educated population, and most importantly, why would a government deny access to higher education to its largest religious minority, comprised of approximately 300,000 people? Unlike the governments of Brazil and New Zealand, the Iranian government has established policies and legislation *against* the Bahá’í community. Access to higher education and teaching at higher education institutions for Bahá’ís are both “illegal.” Although, the standards and quality of education at the well-established BIHE are believed to be of a high-caliber, the courses offered and the institution itself are not accredited, and thus, degrees cannot be issued to students who complete their studies, resulting in uncertain and unreliable future plans after completion or “graduation” from BIHE. An incongruity between access to quality higher education and access to quality, accredited higher education prevails, thus denying the inherent right to advance oneself and contribute to the advancement of society.

Although, many among the Māori community believe that the Treaty of Waitangi has not been fully honored, there is some evidence that indicates that the treaty has been beneficial in improving higher education opportunities for Māori in New Zealand (Durie, 2005). The period between 1984 and 2005 was the first to mark some positive accomplishments on the part of Parliament in honoring Māori rights, including an increase

in Māori admissions at higher education institutions and state recognition of indigenous/Māori knowledge application in education-specific policies and minority-serving institutions (*whare wānanga*), especially founded upon traditional Māori customs (*tikanga Māori*), intending to serve Māori students, in particular, as a form of cultural preservation (Bennett, 2001; Durie, 2005). Additionally, more public and private universities, as well as polytechnic colleges across the country, have been developing additional programs in collaboration with the Ministry of Education, targeting Māori students, while keeping in mind the importance and value of tikanga Māori in curriculum design and delivery, but the discrepancies in tertiary enrollment among Māori students are still rather significant (Walker, 2000). From 1993 to 2007, the Māori graduation rate increased by 153% (Te Puni Kokiri, 2007). These advancements cannot mask the reality that, proportionally, Māori still have the lowest education and income levels in the country. Approximately 30% of Māori were 20 years or older, and 60% of those graduates were 30 years and older, meaning that most younger generations of Māori are not enrolling in higher education, due to one or more social and/or economic barriers. Furthermore, most Māori enrolled in tertiary education pursue alternative vocational studies that lead directly into the manual labor market, employing members of low-income classes of society and offering low wages, especially since most “elite” traditional universities and colleges are not geographically convenient in terms of distance and means of travel for all. The quality of education at wānanga are also of the poorest level. Despite their commitment to upholding Māori standards of knowledge teaching and learning, they still lack a proper balance in ensuring a high level of educational quality. Parliament must focus on improving opportunities for access to quality higher education for Māori would support more positive outcomes for Māori inter-generationally.

Some progress has been made, particularly with the introduction of specific policies and legislation in Brazil and New Zealand, and the increase in global attention on their marginalized plight is putting more pressure on governments to act. Learning some of the history and overall climates of these three countries better informs and heightens the awareness of the researcher, enabling her to better analyze national and international higher education discourses presented in the subsequent chapters with a more holistic perspective. As discussed in the preceding chapter, the higher education laws and policies of these countries (discussed in chapter 7) only address the *what*, so their contexts regarding the statutes of relevant minorities and indigenous peoples helps understand *why* they were introduced and adopted in the first place.

Chapter 5: An International Model for Minority Group and Indigenous Peoples' Equal and Equitable Access to Quality Higher Education

Introduction

Disadvantaged groups and vulnerable populations experience human rights violations that challenge their existence and identities, and marginalized populations such as minorities and indigenous peoples face discrimination and inequality because of their identities. Historically, minorities and indigenous peoples have been denied access to desirable jobs and positions that require quality-level education and that subsequently yield the potential benefits of such an education in their adult lives (Ogbu, 1993). Educational standards and quality for indigenous peoples and minorities also tend to offer their own challenges, as they are most often quite low and inadequate in terms of resources and teacher qualifications. The curricula of education systems, including higher education, are also usually ethnocentric and either completely disregard or misrepresent the beliefs, customs, systems, and identities of these marginalized groups (Ogbu, 1993; Cole, 2011). While significant strides have been made in recognizing the rights of minorities and indigenous peoples in international human rights law, more work is needed in terms of protecting and sustaining those rights, especially within the realm of education and higher education, in particular. Through the application of critical discourse analysis and interpretive policy analysis, this chapter aims to delve deeper into understanding the international breadth and scope of the right to higher education within the pivotal international instruments that frame this study of inquiry—UNESCO's World Declaration on Higher Education for the Twenty-First Century: Vision & Action and the Framework for Priority Action for Change and Development in Higher Education. The World Declaration on Higher Education and its

accompanying Framework for Priority Action are central to the inquiry in this study, as they represent the only international instruments that specifically address higher education in depth. This chapter pays special attention to quantifiable occurrences and qualitative meanings that highlight both equal and equitable access to higher education, as well as the level of quality of higher education, specifically for indigenous peoples and persons belonging to minorities. In order to ensure this analysis is relevant to international discourse, the meanings and implications of equal access, equitable access, and quality higher education will be discussed within an international context.

Chapter 4 offers an introduction and analysis into evolving definitions of indigenous peoples, minorities and higher education within international discourse regarding minorities and indigenous peoples' access to higher education. This chapter will further expand on these definitions, delving deeper into the implications of how they are addressed and connected within international agreements, guidelines, and standards, particularly regarding the right to higher education for minorities and indigenous peoples. In order to understand the nature of the discourse of minorities and indigenous peoples and the right to higher education in international law, this chapter will transcend beyond the national-level cases presented in the preceding chapter and explore their relevance and significance within international human rights law discourse. Analysis of the two instruments will highlight references to equal and equitable access to higher education, the role of quality in higher education, and the role and inclusion of indigenous peoples and minorities (and underrepresented groups in general) within higher education institutions and systems.

Understanding Notions of Equal and Equitable Access to Quality Higher Education within International Discourse

In the Convention Against Discrimination in Education (CADE), “education” is defined as: “all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given” (Article 1(2)). Clearly, here is an example where issues of *access* and *quality* of education are understood to be highly significant and relevant so as to be addressed in the first and only education-specific treaty, especially as part of the definition of education itself. Therefore, the full definition of education provided in CADE sets a precedent for references to education made in other international instruments—binding and non-binding.

With the onset of mass higher education in developed parts of the world contrasted with the dilemma of significantly low tertiary enrollment rates in developing countries, however, challenges still persist nationally and internationally in ensuring that both access to and quality of higher education institutions and systems coexist. More than 40 years after the adoption of CADE, identifying and implementing solutions to these challenges are still at the forefront of international human rights discourse. During the last decade of the twentieth century, which marked the advent of mass higher education, UNESCO (1995) posed two opportune policy questions in its *World Education Report 2000*: “What mechanisms would enable societies to afford mass higher education in order to observe the principle of social equity?” and “How can quality be maintained in a mass higher education system?” (p. 32). As more students enroll in higher education institutions, the quality and standards of the education offered must be improved and maintained. Ensuring the sustainability of such quality with the evolution and growth of higher education institutions is vital, because along

with the growing rate of students and educators enrolling in higher education institutions, the number of higher education institutions in both the public and private sectors are steadily advancing in order to accommodate the ever-growing demand for higher education. Not all countries and regions are experiencing mass higher education enrollments, however. Developing countries, for example, and more specifically, least developed countries, including those within sub-Saharan Africa, have approximately 100 higher education enrollees per 100,000 inhabitants, whereas Western Europe accounts for approximately 5,000 people attending higher education institutions and North America has 2,500 per 100,000 inhabitants (UNESCO, 2000). In “A World of Discrimination: Minorities, Indigenous Peoples and Education,” Mark Curtis (2010) writes:

Of the 101 million children out of school and the 776 million adults who cannot read and write, the majority are from ethnic, religious and linguistic minorities or indigenous peoples. Numerous states are violating international laws and standards by failing to provide adequate education for minorities. The costs of failing to provide education for all are massive, holding back economic growth and potentially sowing the seeds for conflicts. Yet the international community—governments and aid donors alike—has still not fully woken up to the need to address inequities in education, and specifically the needs of minorities and indigenous peoples (p. 13).

Barriers to education for minorities and indigenous peoples are most common in educational curricula and teaching—lack of access to first-language curricula and teaching, discrimination by students and teachers, curricula and pedagogy that disregards cultural values and customs of indigenous peoples and minorities, and textbooks omitting reference to indigenous peoples and minorities or devaluing their cultures and communities. Justino and Litchfield

(2005) argue that of minority and indigenous peoples who are already marginalized and oftentimes “more likely to come from poor households, income inequality further impedes their access to higher education” (p. 12). However, it is understood that not all disparities are income-based (as presented in Table 2.3). The various gaps and inequalities in higher education access, enrollment, and matriculation across communities, neighborhoods, villages, countries, and regions suggest that challenges regarding equal and equitable access and quality must also be explored at the national and regional levels in order to be appropriately assessed and understood at the international level. Consequently, UNESCO’s focus on the national and regional levels has resulted in identifying several state policies that promote the expansion of student enrollment which have led to an increase in the number of women, minorities and indigenous peoples enrolled in higher education institutions. Unfortunately, however, the fields that these underrepresented groups end up studying are concentrated in fields or disciplines that require less funding, including arts, education, humanities and social sciences (and therefore, fewer resources) than in more “resource-demanding fields” such as agriculture, engineering, medicine, and technology. (UNESCO, 1995). Thus, policies promoting broader participation within higher education systems must ensure that equal and equitable access is granted not only in the admissions process, but in all facets of higher learning, including fields of study. International discourse that promotes the broadening of participation in higher education not only encourages diverse disciplinary fields for people to access, but it also fosters diversity of resources, expertise, and ways of knowing.

For equal and equitable access to high quality higher education to be ensured, diversification of enrollees in higher education must be attainable, especially if fostered by

diversifying models of higher education, recruitment methods, funding sources, and admissions criteria (UNESCO, 1998). International discourse on higher education calls for a need for diversification and broadening access of higher education institutions. Additionally, the “democratization of access” and broader participation opportunities in higher education can be beneficial to individuals during various stages of their lives, ensuring that “sufficiently diversified and flexible systems of access to and provision of higher education can meet the challenges of a rapidly changing labor market” (UNESCO, 1995, p. 25). Therefore, access to higher education also promotes a supply of resources that are adaptable to and suitable for an ever-changing society and its demands. In turn, the mutual benefits of guaranteed equal and equitable access to quality higher education, therefore, also contribute to the diversification of and relevance to societal needs.

International discourse regarding equal access to higher education, in particular, can be traced back to Article 26(1) of the Universal Declaration on Human Rights (UDHR), whereby “higher education shall be equally accessible to all on the basis of merit.” Almost two decades later, the Convention Against Discrimination in Education (CADE) reiterated equal access to higher education “on the basis of individual capacity,” and over 40 years later, the Convention on the Rights of the Child (CRC) surfaces, calling upon states to assure that all people have the right to access higher education “on the basis of capacity by every appropriate means.” This reference to “every appropriate means” is unique to the CRC in reference to higher education in particular, and it will be discussed further in Chapter 6. However, equal access to higher education “by every appropriate means” implies that equity and equality are complementary in international human rights law. Equitable means or measures such as affirmative action, for example, can be adopted by states in order to

eliminate barriers such as ethnicity, social class, gender, and religious affiliation to education, as long as it is appropriate and relevant in ensuring access for the population(s) in question.

To ensure equitable access to higher education is guaranteed, participants at the World Conference on Higher Education recorded that it is first vital to focus on “reinforcement and, if necessary, the reordering of links with all other levels of education” (Article 3(b)). Likewise, “secondary education should prepare candidates for access to higher education and higher education should remain open to those successfully completing secondary school” (Article 3(b)). Equitable access to higher education, therefore, becomes a symbiotic phenomenon. This relationship between higher education and lower levels of education underlines the notion that not only should education be continuous and progressive from one level to the next, but that access to higher education is dependent upon this connection. Equitable access to higher education, in turn, requires that equitable access to previous levels of education, as well as equity of opportunities and resources are likewise adopted at primary and secondary levels.

Equality and equity of quality and standards of higher education are also relevant to issues of access. All peoples, including indigenous peoples, minorities, and other disadvantaged groups, must be guaranteed equal and equitable access to higher education and resources of high quality, but within international law, quality of higher education is not given as much attention, and it can be due to a number of factors such as shifting attention to keep up with mass higher education enrollment or working with the limited resources that are sometimes available, in spite of its brief reference in CADE. Although no single international treaty addresses quality of higher education and what it implies, the World Declaration of Higher Education—in response to the points raised in the *Policy Paper for*

Change and Development in Higher Education—clarifies that quality is a “multidimensional concept,” that “should embrace all its functions and activities”: academic programs, buildings, equipment, facilities, research and scholarship, services, staffing, students, and teaching programs, for instance (Article 11(a)), which is expanded upon later in this chapter.

World Conference on Higher Education for the Twenty-First Century

The number of international instruments specifically addressing the right to higher education are few in number, but the World Conference on Higher Education, held in Paris in October 1998, provided an opportunity in which UNESCO’s postsecondary initiatives, meetings, and policies gained momentum, and consequently, galvanized support and participation from hundreds of participants from various corners of the globe. For the first time in the history of international human rights and the right to higher education, a larger global platform to address the right to tertiary education was finally emerging.

International dialogue on the right to higher education, therefore, has become an ever-advancing process, which has only started gaining greater momentum within the last 15 years. Over 4,200 participants—from over 180 countries—were in attendance at the World Conference on Higher Education. On October 9, 1998, the final day of the conference, participants (and consequently, UNESCO) adopted two mutually-reinforcing international agreements that call for states to “increase investment in higher education, encourage diversity and strengthen regional cooperation to serve societal needs” (UNESCO Bureau of Public Information, 2009). The contents of these instruments—the World Declaration on Higher Education for the Twenty-First Century: Vision & Action (hereby referred to as “World Declaration on Higher Education”) and the Framework for Priority Action for

Change and Development in Higher Education (called “Framework for Priority Action”), also inspired inquiries into how equal and equitable access to high quality-level higher education would be defined and envisaged within an international framework. This Declaration is also unique, however, in that it not only addresses the *right* to higher education, but it also upholds high-level expectations and requirements of higher education institutions.

The first and only international instrument specific to higher education, the World Declaration on Higher Education, lays out the potential and actual capacities of higher education institutions, according to member states in attendance at the World Conference, and as the name of its “partner” instrument suggests, the Framework for Priority Action offers guidance on how the “vision” of higher education presented in the Declaration should be applied. UNESCO’s (1995) *Policy Paper for Change and Development in Higher Education* set the groundwork for the World Conference on Higher Education and the adoption of the World Declaration on Higher Education and its accompanying Framework for Priority Action. In this policy paper, UNESCO (1995) emphasized its forward-thinking approach to continuously exploring how it can identify opportunities for “broadening access and participation” in higher education, as well as “enhancing [its] quality in all its functions” (p. 37). UNESCO’s commitment to higher education is not only attributed to those international instruments that promote the right to higher education, such as the Universal Declaration of Human Rights, Convention Against Discrimination in Education, and the Convention on the Rights of the Child. An ever-widening gap in higher education enrollments between developed countries and developing countries and LDCs, in particular, and the growth in the number of students and higher education institutions—sometimes

called the “massification” of higher education—also requires higher education reform and renewal whereby the “advancement, production, dissemination and application of knowledge” must be changed (UNESCO, 1995, p. 38). Similar to the case of primary and secondary education, in its *World Education Report 2000*, UNESCO (1995) indicates that the “significant differences” in higher education between countries and regions are attributed to the quality of the education and how to balance the demand for access with the resources that are available. Article 1 of the World Declaration on Higher Education addresses these challenges by introducing “core missions,” and special emphasis is made to preserve, reinforce and further expand its “mission to contribute to the sustainable development and improvement of society as a whole” through granting equitable opportunities of access, particularly through the provision of an “optimal range of choice and a flexibility of entry points . . . within the system” (UNESCO, 1998). The Framework for Priority Action for Change and Development in Higher Education, which spells out the proposed activities to implement the recommendations of the World Conference on Higher Education, followed the conference debate and signaled the need for “immediate action.” This Framework also serves as a tool to ensure that the directives in the Declaration were to be promptly carried out: “To achieve the goals set forth in this Declaration and, in particular, for immediate action, we agree on the following Framework for Priority Action for Change and Development of Higher Education” (UNESCO, 1998).

World Declaration on Higher Education for the Twenty-First Century: Vision and Action

The World Declaration on Higher Education for the Twenty-First Century: Vision & Action consists of 14 articles that are categorized into the following sections: “Missions and

Functions of Higher Education”; “Shaping a New Vision of Higher Education”; and “From Vision to Action.” In its Preamble, the motivation and purpose of drafting and adopting the World Declaration on Higher Education is evident:

Without adequate higher education and research institutions providing a critical mass of skilled and educated people, no country can ensure genuine endogenous and sustainable development and, in particular, developing countries and least developed countries cannot reduce the gap separating them from the industrially developed ones. Sharing knowledge, international co-operation and new technologies can offer new opportunities to reduce this gap (UNESCO, 1998).

The World Declaration on Higher Education, therefore, intends to address the widening disparities occurring between “industrially developed, the developing countries and in particular the least developed countries” regarding access and resources to higher education and research. The signatories at the World Conference on Higher Education uphold that institutions of higher learning can offer solutions to such socioeconomic gaps, particularly through enhancing opportunities for knowledge-sharing, international collaboration, digital literacy, and technological advancements. The Declaration also specifically underlines the unequal conditions of underrepresented groups and how these “special target groups” should be supported.

Furthermore, this Declaration was adopted in response to recommendations concerning higher education made by major commissions and conferences calling upon the World Conference on Higher Education “to promote the transformation of post-secondary institutions into lifelong learning institutions and to define the role of universities accordingly” (UNESCO, 1998).

Framework for Priority Action for Change and Development in Higher Education

In keeping with the directives of the World Declaration on Higher Education and the Universal Declaration of Human Rights that higher education “shall be accessible to all on the basis of merit,” the Framework for Priority Action expounds upon how states, higher education institutions and all other stakeholders can apply the “key national objectives”—access, diversification, equity and relevance—into higher education systems and societies. The following three sections of the Framework are: 1) Priority Actions at National Level (targeting state governments and parliaments, and other decision-makers); 2) Priority Actions at the Level of Systems and Institutions (higher education systems and institutions); and 3) Actions to be Taken at International Level and, in Particular, to be Initiated by UNESCO (intergovernmental organizations, donor agencies, and non-governmental agencies).

Section I(6)(b) of the Framework for Priority Action states that the aim of higher education institutions should be “primarily concerned to establish systems of access for the benefit of all persons who have necessary abilities and motivations.” Although it is unclear as to what these “necessary abilities and motivations” are, this clause suggests that not “all” people have them even if they parallel the concept of individual capacity, a primary determinant of equal access to higher education in international human rights law.

Perspectives on Access from the World Conference on Higher Education

The two complementary instruments are analyzed together in order to avoid any instances of redundancy, but differentiated references between the Declaration and the Framework are made as they are appropriate and when necessary. The contents of the first section, the World Declaration, is much richer descriptively, and therefore, it is also lengthier

than the Framework. The former is also theoretical in its description, whereas the latter is more practical and action-oriented (as its title implies).

The texts of both World Declaration on Higher Education and the Framework for Action forbid all forms of discrimination and any kind of unequal treatment. In the World Declaration, it is stated, “No discrimination can be accepted in granting access to higher education on the grounds of race, gender, language or religion, or economic, cultural or social distinctions, or physical disabilities” (Article 3(a)). Standing alone as the only existing international instrument on the right to higher education, the Declaration and Framework also highlight the necessity of states to ensure access to higher education for their marginalized and underserved communities so such discrimination is eliminated:

Access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities, must be actively facilitated, since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations (Article 3(d)).

The benefits of granting indigenous peoples and minority groups access to higher education should also be evident within the local and national communities they reside and work.

Regarding these same targeted groups, UNESCO (1998) reminds states that “Special material help and educational solutions can help overcome the obstacles that these groups face, both in accessing and in continuing higher education” (Article 3(d)). These options to implement “[s]pecial material help and educational solutions” are the special measures—temporary or permanent—that states can implement in order to guarantee equitable access

to higher education for indigenous peoples, minorities, and other groups. Likewise, in the Framework for Priority Action,

States in which enrolment in higher education is low by internationally accepted comparative standards should strive to ensure a level of higher education adequate for relevant needs in the public and private sectors of society and to establish plans for diversifying and expanding access, particularly benefiting all minorities and disadvantaged groups (I(2)).

In developing countries and LDCs, where the phenomena of mass higher education is significantly low or non-existent, tertiary-level enrollment rates are far from becoming a trend even among majority populations in society, and therefore, initiatives must be taken in order to address the low rates of tertiary enrollment, particularly of marginalized groups. It is not clear, however, what exactly the “internationally accepted comparative standards” are in regards to the levels of student enrollment.³⁵ Measures for increasing access to higher education for minorities and indigenous peoples should be taken to increase higher education enrollment rates and diversity in higher education systems. These excerpts above are the only two direct references made to minorities and other disadvantaged groups.

However, Article 4 of the World Declaration on Higher Education also focuses on promotion of gender equality, equity and women’s access to higher education.

In order to advance the “core missions and values” of higher education introduced in Article 1 of the World Declaration on Higher Education—“to contribute to the

³⁵ While some might think that these standards are determined by the International Standard Classification of Education (ISCE), UNESCO (1997) has made it clear that “Whilst ISCED may be easier to use for collecting enrolment data, it should be stressed that it is a classification of educational programs and does not deal with the flow of students through the education system.” The “internationally accepted comparative standards,” therefore,

sustainable development and improvement of society as a whole”—the issue of access to higher education must also clearly be a key topic of discussion within such higher education discourse. Access to higher education is mentioned nearly 30 times in the World Declaration on Higher Education and the Framework for Priority Action. Two direct references to equal access to higher education are quotes taken directly from international instruments, stating that higher education shall be “equally accessible to all,” and four indirect references to equal access are made, whereby access to higher education is emphasized to be available to “all.” In this section, further exploration of such references includes an analysis of references made to thematic and topical words and phrases discovered in the World Declaration on Higher Education and the Framework for Priority Action that are relevant to equal and equitable access to higher education, as well as the quality of higher education.

Equal access to higher education, according to standards of international law, is dependent upon each individual’s “merit.” Merit-based access or access on the basis of individual capacity is addressed on more than 15 occasions. Access to higher education granted on the basis of merit for disadvantaged groups, however, poses challenges as it disregards the barriers and obstacles they face regarding access to high-level quality education and resources compared to their majority counterparts. Given the unequal circumstances which most indigenous peoples and minorities experience, granting access to higher education based on merit alone is inequitable, and this reality is recognized in the World Declaration on Higher Education. Article 3(c) of the World Declaration on Higher Education states that it is not until massification of or demand for higher education increases should merit be the primary criterion for admission to higher education institutions: “the rapid and wide-reaching demand for higher education requires, where appropriate, all

policies concerning access to higher education to give priority in the future to the approach based on the merit of the individual.” It is not clear, however, as to what is implied by “appropriate” and who determines what is appropriate—the state, UNESCO, or overall international standards? This clause suggests that once mass higher education occurs, merit-based access for all is conditional, and therefore, determined by the state. Thus a paradigm shift seems to have occurred at the international level regarding the understanding of unequal access to higher education. Since mass higher education has already resulted in a growing rate of access opportunities for disadvantaged groups, including indigenous peoples and minorities (Cole, 2011), it is then plausible to understand why admissions to postsecondary institutions would prioritize equal (rather than equal *and* equitable) standards (i.e., merit-based) in the future. What is equally important is that pre-primary, primary, and secondary school systems are also equally accessible in terms of standards and quality for all populations, curbing every other obstacle and barrier that marginalizes specific groups and peoples within communities. In UNESCO’s (1998) World Declaration, it is stated:

In keeping with Article 26.1 of the Universal Declaration of Human Rights, admission to higher education should be based on the merit, capacity, efforts, perseverance and devotion, showed by those seeking access to it, and can take place in a lifelong scheme, at any time, with due recognition of previously acquired skills (Article 3(a)).

This section also suggests that states must guarantee that their indigenous and minority populations that experience unequal and inequitable access to all levels of education are granted opportunities to access higher education based on criteria other than merit, as Article 3(a) concludes with the following statement: “As a consequence, no discrimination

can be accepted in granting access to higher education on grounds of race, gender, language or religion, or economic, cultural or social distinctions, or physical disabilities.” For most indigenous and minority communities, a combination of two or more of these above characteristics exist, which further marginalizes them, creating greater obstacles to accessing higher education. The Declaration also considers access to higher education, capacity, efforts, perseverance, and devotion as relevant criteria regarding access, all of which are not necessarily quantifiably measurable.

Thus, admission to higher education is not only contingent upon an individual’s merit and capacity, but on one’s “efforts, perseverance and devotion” as well, which is similar to the idea of “necessary abilities and motivations” dictated in the Framework for Priority Action. The question of assessing or measuring these indicators also comes to mind. For instance, will an individual’s capacity and devotion be measured in the same manner of merit? Will admissions determine quantitative, qualitative methods or a combination of both? UNESCO’s interpretation of the right to higher education presented in UDHR is also somewhat puzzling, especially since Article 26(1) clearly states that “higher education shall be equally accessible to all on the basis of merit.” Aside from equal access on the basis of merit, therefore, equitable access is not referenced in the article, and nor is there any mention of “capacity, efforts, perseverance and devotion.” Perhaps, nearly 50 years after the Universal Declaration, the implications of access to higher education have changed within international discourse, especially since the Universal Declaration of Human Rights marks the first “international bill of human rights” law that addresses access to higher education among other rights (United Nations, 2014). The discourses relevant to higher education in the international arena have adapted to and reflect the current physical realities of inequality.

Chapter 6 delves deeper into this evolution in the understanding of access to higher education within an international framework.

Article 3(a) of the World Declaration falls under sub-section of Article 3 titled “Equity of Access.” Article 26(1) of UDHR, on the other hand, specifies equal access. There *is* a difference between equal and equitable access; the former ensures that access is granted to individuals who meet the same criteria for admission to higher education for all individuals, such as merit in this case. The latter grants access to higher education according to “justifiable” criteria due to unequal treatment against particular individuals and/or groups. Equal access is based on upholding the *same* standards for all (regardless of their differences), and equitable access is determined upon *fair* and *just* means that place the disadvantaged on a level where they can access equal standards and quality of education. In the World Declaration on Higher Education, for instance, it is dictated that equal access to higher education based on merit will be a priority in the future as mass higher education continues to develop and progress throughout the world. Equitable access to higher education based on “special measures,” on the other hand, call for states to implement temporary approaches that protect the rights of those peoples and groups (e.g., indigenous peoples, minorities, women, girls, disabled persons) that are discriminated against, disadvantaged, marginalized, and treated unequally within society because of their identities until equality is fully achieved according to the state.

Documented outcomes from the meeting at the World Conference on Higher Education heightens the discourse on access to higher education that hardly surfaces amidst the content of other international instruments that precede it, such as the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural

Rights, and Convention Against Discrimination in Education. These latter international instruments, among others, make broad and brief references to access to higher education (as discussed in the following chapter). This conference provided an opportunity for participating member states and NGOs to explore how the definition and implications of access to higher education could be expanded and understood across various dimensions—access to higher education systems, access to vocational training, access to knowledge and research opportunities, and access to quality-level education, for example.

Access to higher education is also contingent upon equitable access across all levels of schooling, particularly secondary education (as previously mentioned in Article 3(b) of the World Declaration). So clearly, there is a shared belief that *equitable* access to higher education should be associated with equitable access to all forms of secondary education and its equivalent. The topic of access to and/or within higher education systems is addressed on 54 occasions in the two World Conference on Higher Education instruments, and nearly 54% of those instances specifically refer to “access,” while the remaining 46% alludes to issues of access indirectly. Although the focus of this dissertation is to understand the discourse pertinent to *equal* and *equitable* access to quality higher education, there is a third (yet closely related) dimension of access introduced in the World Declaration and the Framework for Priority Action—*expanded*, “open,” or “widened” access.

Expanded access is closely related to equal and equitable access and may even be considered as an extension of the two, as it is presented as an alternative to addressing the barriers that foster unequal and inequitable access to higher education institutions and within higher education systems. In these two instruments, “expanded” access is understood to be synonymous with similar terms such as “widened access” and “open access,” which are all

used to target access for disadvantaged groups, marginalized peoples, and adults without formal schooling who would be accessing higher education for the first time. In states, where access to higher education is considerably low, the language in the Framework indicates governments must adopt “internationally accepted comparative standards [that] should strive to ensure a level of higher education adequate for relevant needs in the public and private sectors of society and to establish plans for diversifying and expanding access, particularly benefiting all minorities and disadvantaged groups” (I(2)). What is implied or suggested by “internationally accepted comparative standards” is unclear, as most countries that have “high” tertiary education enrollment rates come from developed countries that are experiencing high rates of massification in higher education. National standards, on the other hand, which are also often mentioned in international instruments, are more or less open-ended, as they are defined and interpreted on a state-to-state basis. Thus, with the acceleration of mass higher education globally, not only are states (mostly developing countries) expected to ensure the relevance of higher education to the workforce, but they must also safeguard the diversification and expansion of access, so as to benefit minority and other disadvantaged groups. What this section of the Framework for Priority Action overlooks, however, is that some states with high tertiary enrollment states still have disproportionately low enrollment rates among their indigenous and minority populations, as well as other disadvantaged groups. In Article 9(a) of the World Declaration for Higher Education, it is likewise stated that:

there is a perceived need for a new vision and paradigm of higher education, which should be student-oriented, calling in most countries for in-depth reforms and an open access policy so as to cater for ever more diversified categories of people.

In this case, “most countries” are called upon to implement open access policies, which not only results in the diversification of students enrolled in higher education, but it also potentially creates more channels to access higher education for indigenous peoples, minorities, and other disadvantaged groups.

In addition to disadvantaged groups, there are other populations that are also intended to benefit from open or widened access. At the national level, states should also be “creating gateways to higher education, especially for older students without any formal secondary education certificates, by attaching more importance to their professional experience” (I(3)). Linking diversely-aged peoples’ professional or vocational experiences to higher education offers mutual access points into higher education and society allowing for the manifestation of the relevance of postsecondary learning. Higher education institutions, therefore, comprise:

lifelong learning approaches, giving learners an optimal range of choice and a flexibility of entry and exit points within the system, and redefine their role accordingly, which implies the development of open and continuous access to higher learning and the need for bridging programs and prior learning assessment and recognition (I(1)(d)).

Expanded access of higher education systems is capable of widening and further developing the knowledge base of communities and societies inter-generationally. Such malleability of access to and from higher education institutions could also potentially offer more opportunities for cultural sustainability and identity preservation through teaching and learning of traditional knowledge and ways of knowing, especially among indigenous

peoples, minorities, and other disadvantaged groups, of any age group, to serve and advance communities, including their own, intergenerationally.

As common in most international human rights instruments, equal access to higher education dominates global discourse. Aligning with the same article, most emphasis regarding equal access to higher education is based on individual capacity, merit, or both, so equal access is contingent upon the state's understanding of what "capacity" and "merit" imply, as there are no definitions or explanations provided in international human rights instruments as of today. Although a universal standard of both terms is yet to be defined, unlike merit, individual capacity is subjective and an isolated determinate for admission into higher education and an ongoing measure of individuals during the course of postsecondary studies and after their completion. Hence, the term "capacity-building" is also language frequently used in the World Declaration on Higher Education and the Framework for Priority Action, which suggests that access to higher education does not necessarily end after one is admitted into a higher education institution, but that the benefits of higher education reverberate beyond the walls of higher education institutions—just as indigenous peoples, minorities, and other marginalized populations. For instance, in the World Declaration, these underrepresented groups are recognized as "collectivities and as individuals [who] may have both experience and talent that can be of great value for the development of societies and nations" (Article 3(d)).

The World Declaration on Higher Education and the Framework for Priority Action move beyond the typical, broad sweeping discourses of higher education found in most international instruments. This notion of building intergenerational and sustainable capacity is just as important in understanding the educational experiences of indigenous peoples,

minority groups, women, and other disadvantaged groups, who, on most occasions, are ironically dehumanized and marginalized due to ignorance. Indigenous peoples and minorities have the potential to manifest capacities that are no less than those representing the dominant society but only as long as appropriate and equitable conditions permit, which is why access must initially be equitable. Merit, on the other hand, is dependent upon such capacities to be developed, which is why most marginalized populations do not have the opportunity to excel and advance to higher education at equal rates because their economic, social, cultural, and political marginalization prevents them from making this possible (Justino & Litchfield, 2005).

Inferences to and mention of equitable access suggest that states parties understand the value of offering fair and just avenues of access to higher education institutions and within higher education systems. Proposing equitable policies and action at the state, institutional, and international levels also informs international human rights discourse that prohibits discrimination against and unequal treatment of all kinds, including marginalized populations, particularly so that these communities can gain access to higher education “on a level playing field.” As a matter of fact, ensuring equitable access to higher education for indigenous and minority populations (and other “disadvantaged groups”) appears to be one of the key target areas of equity in the World Declaration of Higher Education and the Framework for Priority Action.

There is one specific reference made to indigenous peoples and minority groups regarding the right to *equal* access to higher education; two sections mentioning equitable access via “[s]pecial material help and education solutions”; and two instances of expanded access—one specifically addressing access for women and the other addressing

disadvantaged groups in general. To be clear, the reference to *equal* access for these marginalized groups was not an explicit reference to disadvantaged groups or peoples in particular. Rather, in Article 3(a) of the World Declaration on Higher Education, equal access in reference to indigenous peoples, minorities, and other disadvantaged groups is based on the understanding of common international human rights treaty language that prohibits all forms of discrimination on the basis of race, color, nationality, sex, gender, religion, socioeconomic status, and so on: “no discrimination can be accepted in granting access to higher education on grounds of race, gender, language or religion, or economic, cultural or social distinctions, or physical disabilities.” However, the World Declaration—consistent with other international instruments—addresses the prohibition of discrimination, which is the underlying cause of inequality and inequity for underrepresented groups.

In all, the World Declaration and Framework include nearly 30 references to access to and/or within higher education institutions and systems. Table 5.1 includes the various dimensions of access that are addressed in the World Declaration on Higher Education and/or the Framework for Priority Action. As presented in the table, various references to access are mentioned that extend beyond basic discourses of equal and equitable access to higher education. Even specific mention regarding access to resources such as technology and quality teaching, for example, address the need for equal and equitable access in these regards.

Themes			
	Equal	Equitable	Expanded ³⁶
Adult/Continuing Education	—	1	3
Career-Oriented	—	—	1
Collaboration & Partnerships	—	1	—
Diversification	—	2	2
General Higher Education	1	5	1
ICTs/Technology	1	3	2
Indigenous Peoples, Minorities, & Other Disadvantaged Groups ³⁷	1	2	2
Individual Capacity	10	—	1
Knowledge & Research	—	—	2
Life-Long	2	—	—
Merit-Based	7	—	—
Resources	1	—	—
Pre-Postsecondary Education	—	1	3
Total (54)	23	14	17

Table 5.1: The frequency of themes relevant to access to and within higher education in the World Declaration on Higher Education & the Framework for Priority Action

There are 12 total statements that refer to either “diversity,” “diversification,” or “diversifying” in the two instruments. Within the context of the two instruments, diversity refers to the multidimensional aspects of cultural diversity and the need to avoid uniformity in all areas of higher education—not just demographically. Article 8 of the World Declaration on Higher Education is relevant to “[d]iversification for enhanced equity of opportunity.” Diversification of higher education is a recurring theme in the Framework for

³⁶ Although “expanded” or broadened access is not a primary focus of this inquiry, it is addressed sufficiently in the World Declaration on Higher Education and the Framework for Priority Action that it was included in this table. Expanded/broadened access also serves as an approach to promoting equitable access.

³⁷ Other disadvantaged groups mentioned in the World Conference on Higher Education instruments include those marginalized on the basis of age, disability, and gender. Women are also specifically mentioned.

Priority Action as well, and advancing the diversity agenda within higher education is included among one of the primary goals of the 1998 World Conference on Higher Education, because diversity is dependent upon access to higher education; but not just any kind of access—“open” and “widen[ed]” access, which not only promotes the enrollment of a more diversified body of students and teachers, but also fosters diversified disciplines, pedagogy, curricula, training, research, knowledge development, and opportunities to work with and advance technology. ICTs are also recognized—in Article 12(b) of the World Declaration for Higher Education—for their capacity to facilitate equal and equitable access to high-quality learning.

Perspectives on Quality from the World Conference on Higher Education

The World Declaration on Higher Education discourse on equitable access is also applicable to adults without any previous formal schooling, including individuals who have been out of schooling for significant periods of time. Equitable access to information and communication technologies for marginalized populations is also addressed, as well as equitable access to knowledge that is often dominated: “closely following the evolution of the ‘knowledge society’ in order to ensure high quality and equitable regulations for access to prevail” (Article 12(f)). It appears (in both the Declaration and Framework) that equitable access for underrepresented groups to such knowledge of a high-level quality—especially through the application of relevant technology, for that matter, is groundbreaking within international human rights law discourse. It is noteworthy because it explicitly identifies the need for disadvantaged groups such as indigenous peoples and minorities to overcome various barriers and obstacles, preventing them from physically accessing (as opposed to virtually accessing) higher education institutions. Such conditions equally contribute to the

diversity of higher education systems, which encourages members of minority and indigenous communities to be more likely to attend institutions of higher learning. Both the World Declaration and the Framework address equitable (and even expanded) access and its necessity for promoting and advancing diversity within higher education systems—one of the primary national objectives dictated by UNESCO.

As mentioned in the last section, ICTs also play a vital role in the enhancement of quality and are thus capable of:

creating new learning environments, ranging from distance education facilities to complete virtual higher education institutions and systems, capable of bridging distances and developing high-quality systems of education, thus serving social and economic advancement and democratization as well as other relevant priorities of society, while ensuring that these virtual education facilities, based on regional, continental or global networks, function in a way that respects cultural and social identities.

Even with the implementation of ICTs, the description of this interconnected approach suggests that high-level quality is essential at all levels and stages of implementation within higher education systems, stimulating the “advancement and democratization” of societies. This idea of “lifelong” or long-term influence and service of quality-level higher education systems appears to be a resonating theme throughout the two World Conference on Higher Education instruments. A unique aspect of this section highlights the need to preserve and respect individual identities within online or virtual spaces between local and global higher education networks. The importance of the development and preservation of indigenous peoples and minorities’ identities within international human rights law was discussed in

chapter 4. Oddly, this is the only section out of the two instruments, however, that specifically highlights the need for respecting and honoring the diverse identities of peoples within higher education systems and/or institutions, while maintaining high-quality standards. For the most part, however, international human rights treaties and non-binding instruments that acknowledge disadvantaged groups often raise the issue of identity as central to protecting indigenous and minority rights, especially in relation to primary and secondary education and schooling. The following chapter further investigates this topic, but it is important to note that it should be just as important to address the need for acknowledgement and respect of identities at the tertiary level, particularly when language in favor of diversification of higher education is so staunchly promoted, while ensuring high levels of quality at all times.

Therefore, access to and within higher education is also highly relevant to the discourse of quality-level education within the World Declaration on Higher Education and the Framework for Priority Action. There are 19 total direct references to “quality” between the two instruments introduced at the World Conference on Higher Education—close to 40% of the “quality” references are at a significant level—“high,” “high-level,” or an “indispensable level of quality,” while the majority are general references to quality or are to be determined by the state at the national level.

From the perspective of those attending the World Conference on Higher Education, it is important to recognize two goals of the conference with regard to quality higher education—first of all, quality must be guaranteed and preserved as such, and secondly, the level of quality must be continuously improved, especially in the areas of “teaching, research and services, relevance of programs, employability of graduates,

establishment of efficient cooperation agreements and equitable access to the benefits of international cooperation” (UNESCO, 1998). Article 12 of the World Declaration on Higher Education relays a similar theme, but this time, it is specific to the role of information communication technologies (ICTs), “ensuring quality and maintaining high standards for education practices and outcomes in a spirit of openness, equity and international cooperation.”

The recurring theme present in both instruments is that the quality of higher education is not only required to be a priority consideration at the state level, but it is also imperative in fulfilling the “key national objectives” (access, diversification, equity and relevance) introduced earlier. The differentiation between equal and equitable access to quality higher education, however, is not made here, as all references to quality in the World Conference texts are understood to be universal—“for all” regardless of the specification of equal or equitable access.

Quality and relevance appear to have some kind of complementary relationship in the international context of higher education, as they are paired together on a few occasions. In the Preamble of the World Declaration on Higher Education, there is an expectation of states to facilitate the “enhancement of [the] quality and relevance” of higher education. Given that relevance is also one of the “key national objectives,” it is understandable why its close association with quality is so important. The World Declaration on Higher Education, describes relevance in higher education as “the fit between what society expects of institutions and what they do” (Article 6(a)). Assessing and ensuring that relevance is applied within higher education systems requires several elements: “ethical standards, political impartiality, critical capacities and, at the same time, a better articulation with the problems

of society and the world of work, basing long-term orientations on societal aims and needs, including respect for cultures and environmental protection” (Article 6(a)). The purpose of achieving relevance is to ensure access to both broad general education and targeted, career-specific education, often interdisciplinary, focusing on skills and aptitudes, both of which equip individuals to live in a variety of changing settings, and to be able to change occupations. This pairing of quality and relevance, therefore, assures that a symbiotic relationship exists between the two, because in order for higher education to be of high or “indispensable” quality, it must also be relevant to the population(s) it intends to benefit and serve. Otherwise, the “quality” factor is extraneous to achieving the “lifelong” purpose of higher education if it is not relevant. Likewise, if higher education institutions and systems do not guarantee relevance in all aspects of higher education, maintaining a significant level of quality would be absolutely meaningless.

Safeguarding high quality higher education is also a responsibility of higher education administrators and leaders within higher education institutions and systems, therefore, and such quality is dependent upon the capacity and level of teaching, professional development, and community outreach, as dictated in the World Declaration: “The ultimate goal of [higher education] management should be to enhance the institutional mission by ensuring high-quality teaching, training and research, and services to the community” (Article 13(c)). Furthermore, UNESCO (1998) calls upon higher education institutions to guarantee a “high quality of international standing” (Article 6(g)), suggesting that the emphasis on international status requires an international standard of higher education globally, aligning with international standards of all rights. The quality of financial operations that foster transparency and accountability is also understood to be necessary: “The

diversification of funding sources reflects the support that society provides to higher education and must be further strengthened to ensure the development of higher education, increase its efficiency and maintain its quality and relevance” as stated in the World Declaration (Article 14(a)). Clearly, diversification is an anticipated process in *all* dimensions of higher education systems, including the various channels of financial subsidization and the maintenance and improvement of the quality and overall applicability of those accessing higher education on society. At the national or state level, the Framework emphasizes that ensuring quality and relevance is also necessary for bridging horizontal and vertical gaps of opportunity for educator and learners’ mobility across national and international boundaries: “promote and facilitate national and international mobility of teaching staff and students as an essential part of the quality and relevance of higher education” (I(1)(m)).

Summary

For the most part, the World Declaration on Higher Education and the Framework for Priority Action only address access relevant to disadvantaged groups such as indigenous peoples and minority groups on three separate occasions (as the fourth reference to women does not include any specific reference to indigenous and/or minority women in particular), which is not such a “significant” number at all, but the number of relevant instances addressing access to higher education for these disadvantaged groups does outnumber the limited emphases and references of most of the international human rights discourse found in other binding and non-binding instruments. The connection between the inclusion of minorities and indigenous peoples and access to education and more specifically, higher education, is lacking in other international instruments. Perhaps the drafting and adoption of the declaration and framework at the World Conference on Higher Education indicate that

some degree of progress has taken place in the international recognition of the importance and need for indigenous peoples and minority groups' right to gain equitable access to higher education, moving beyond general discourses about equal access to address to the relevant conditions these disadvantaged groups and others face.

The purpose of this chapter was to analyze how equal and equitable access to quality-level education are broadly understood within three areas of international human rights law—the right of indigenous peoples, the right of minority groups, and higher education. In its 2000 *World Education Report*, UNESCO acknowledges the fact that distinct aspects of the right to education within the international human rights context have evolved through various interpretations and analyses over time since the adoption of the Universal Declaration of Human Rights in 1948, including discourse relevant to higher education.

The World Conference on Higher Education instruments failed to include information on self-determination for indigenous peoples or any other disadvantaged groups. Rather, the emphasis was more so on the five broader “objectives” of higher education internationally: access, diversity, equity, quality, and relevance. The coherence of issues related to access and quality within higher education institutions and systems is evident in the consistent interconnectivity and overlapping of these seemingly mutually dependent “key national objectives.” In addition to access and quality, themes of equity, diversification, and relevance surface in a reinforcing manner throughout both instruments of the 1998 World Conference on Higher Education. There are common threads between all these texts as well, however. Implications of equal and equitable access resonate well throughout all four, as well as the concept of relevance as it relates to rights for indigenous peoples, minority groups, and the role of higher education in the world. Quality is vaguely

defined and understood in the World Declaration on Higher Education and the Framework for Priority Action, and this lack of clarity and depth is also particularly odd since quality is one of the resounding themes and key national objectives echoed at the 1998 World Conference on Higher Education.

Thus the World Declaration on Higher Education and Framework for Priority Action are evidently far broader in their intended scope of target population than the guidelines for the protection of indigenous peoples and the standards for minority group rights—not limited to any particular peoples or groups, but generally addressing the issue of equal and equitable access to higher education globally or “universally.” Equal and equitable access to higher education institutions and within higher education systems are also evidently issues of great import to the participants and represented state parties of the World Conference on Higher Education in Paris in 1998, and its forward-thinking, intergenerational content suggest that these conversations will continue to evolve and progress.

Chapter 6: The Right and Access to Higher Education for Minorities and Indigenous Peoples: An International Analysis

Introduction

While there might be “plenty” of discourse within various disciplines and fields that highlight disparities in higher education enrollment and matriculation across racial, ethnic, linguistic, religious, and indigenous identities, the focus on “equal” and “equitable” access to “quality” higher education is much more limited. Furthermore, the discourse that *does* highlight access to higher education is dominated by research from developed countries mostly in the Northern and Western Hemispheres, and therefore, cases regarding indigenous peoples and minorities from developing countries, where higher education enrollment rates are often quite low. Most of the researchers conducting and reporting these same studies represent majority communities, which are written in non-minority and non-indigenous languages without any consultation, representation, or support from minority or indigenous communities. Thus, the preservation and protection of indigenous and minority identities are less likely guaranteed within such discourses, and the cases, therefore, may potentially present “othering” perspectives that are dehumanizing, inaccurate, ostracizing, and unfounded (Smith, 2012). At the international level, comparative analyses addressing access to higher education that are specific to minority group and indigenous populations are almost negligible. International instruments, on the other hand, are drafted and adopted by international agencies such as the United Nations or regional agencies, including the African Commission on Human and Peoples’ Rights (ACHPR) and the European Commission on Human Rights (ECHR), comprised of diverse peoples from around the world that are member states of such agencies. Yet even those speaking on behalf of states, represent the

views of governments rarely accurately include the voices of marginalized peoples. Usually, NGOs and international nongovernmental organizations (INGOs) fill in where states' voices fall short regarding the status of vulnerable groups and persons.

This chapter focuses on the analysis of international instruments that are explicitly and implicitly relevant to the right to higher education for indigenous peoples and minorities. Special attention is paid to issues of equal and equitable access to higher education and the question of quality. Questions that are explored include: Do international instruments that have been drafted and adopted by various international agencies of the United Nations and its various affiliates (e.g., United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Development Program (UNDP), United Nations Children's Fund (UNICEF), and so on), address minority groups and indigenous peoples' access to higher education, and if so how? Is there emphasis on the importance of both equal *and* equitable access to higher learning of high-quality? What is missing from this respective area of discourse? This chapter delves into the various international instruments that address issues relevant to the study, including: the right to education and higher education; access to education and higher education; quality of education; rights of minority groups; rights of indigenous peoples; and references to equality and equity.

As discussed earlier, the international approach to understanding and protecting the rights of minority groups and indigenous peoples to access higher education can easily come across as very abstruse. Unlike traditional international instruments that are broadly generalized and vague, the World Declaration on Higher Education and the Framework for Priority Action provide detailed guidelines regarding the purpose of and right to higher education. Although this study focuses on cases within three countries from three regions of

the world, they also share some attributes, evident in their substantial minority and indigenous communities.

International Instruments that Promote Access to Higher Education for Minorities and Indigenous Peoples

It is evident that the number of international instruments specifically addressing the rights and protections of minorities and indigenous peoples is small. International instruments addressing higher education are even more limited. Thus, international instruments addressing access to higher education for minorities and indigenous peoples are even scarcer. There are several international and regional instruments that address access to higher education for minority and indigenous populations, and these instruments are categorized based on the legal potency behind them within the sphere of international law. As mentioned earlier, there are binding (commonly referred to as “hard law”) and non-binding (“soft law”) instruments. The former category refers to treaties, which “[confer] legal obligations to states parties to these instruments,” and the latter mostly includes declarations, recommendations and resolutions, providing “guidelines and principles and imposes moral obligations on states” (UNESCO, 2013b).

The international instruments included in this study, which are summarized below, include eight legally-binding or “hard law” treaties (five conventions and three covenants)—the Covenant Against Discrimination in Education (CADE); Convention Concerning Indigenous and Tribal Peoples (ILO 169); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); Convention on the Rights of the Child (CRC); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);

International Covenant on Civil and Political Rights (ICCPR); and International Covenant on Economic, Social and Cultural Rights (ICESCR)—and seven non-binding or “soft law” instruments (seven declarations)—Declaration on Race and Racial Prejudice (DRRP); Declaration on the Rights of Indigenous Peoples (UNDRIP); Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities; UNESCO Universal Declaration on Cultural Diversity; Universal Declaration of Human Rights (UDHR); Declaration on the Elimination of All Forms of Intolerance and of the Discrimination Based on Religion or Belief; and Vienna Declaration and Programme of Action (Vienna).³⁸ Tables 2.1 and 2.2 (chapter 2), respectively, present brief characteristics and findings on binding and non-binding instruments in order of their adoption date.

Clearly, there is an exhaustive, ever-growing list of international mechanisms—conventions, covenants, declarations, optional protocols, recommendations, resolutions, reservations, Special Rapporteur and independent expert reports, and Universal Periodic Reviews (UPRs) within reach,³⁹ but the instruments listed above were intentionally selected because of their relevance to minorities and/or indigenous peoples and higher education. The examination into each of these instruments aimed to identify if and how: 1) the target populations in question are acknowledged (minorities and indigenous peoples); 2) higher

³⁸ As mentioned in an earlier chapter, the binding International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families —although highly relevant to minorities—did not include any content relevant to the focus of this study, and therefore, it was decidedly excluded from analysis.

³⁹ The Universal Periodic Review (UPR) was established on March 15, 2006 by resolution 60/251 requesting a review of the status of human rights of all member states. Every four years, member states are required to submit a UPR report declaring what steps have been taken to improve human rights in their respective states or territories as well as document their compliance with international human rights instruments including: the Charter of the United Nations; Universal Declaration of Human Rights; human rights instruments (international or regional) which the State is party to (i.e., those ratified by the State concerned); voluntary pledges commitments and/or pledges made regarding policies, legislation, etc. at the national, regional, or international level; and relevant international humanitarian law. The UPR is considered to be a “State-driven process,” which is facilitated by the Human Rights Council, ensuring “equal treatment for every country when their[sic] human rights situations are assessed” (Office of the High Commissioner for Human Rights, 2012).

education is addressed; 3) equal and equitable access to higher education are defined and described for the target populations; and 4) the understanding of the level of quality and/or standards of higher education are discussed.

Binding Instruments

Convention Against Discrimination in Education

Adopted by UNESCO on December 14, 1960 at the General Conference of UNESCO in Paris, the Convention Against Discrimination in Education (CADE) is the first and only legally-binding treaty that exclusively focuses on the right to education within international law, and as its title suggests, its preamble and 19 articles cover the various aspects of proscribed discrimination within education of all types and levels. To date, only 101 member states are parties to the Convention Against Discrimination in Education. CADE is similar to the World Declaration on Higher Education, but two main differences between the two instruments is that CADE is legally binding and it focuses broadly on education—not solely on higher education like the World Declaration. It provides expectations of how the right to education should be endorsed and protected. The Convention begins by defining discrimination as:

[A]ny distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic conditions or birth, has the purpose or effect of nullifying or impairing equality of treatment in education (UNESCO, 1960, Article 1).

This definition sets a precedent and tone for the rest of the Convention. The act of “nullifying or impairing equality of treatment in education” implies that equality is inherent, because to “nullify” or “impair” equal treatment in education would mean putting an end to

it, resulting in *inequality* or unequal treatment. Discrimination includes: “depriving any person or group of persons of access to education of any type or any level” (Article 1(1)(a)); “limiting any person or group of persons to education of an inferior standard” (1(1)(b)); “establishing or maintaining separate educational systems or institutions for persons or groups of persons” (segregation of schooling based on sex, religious, linguistic, and private educational systems and institutions are excepted) (1(1)(c)); and lastly, “inflicting on any person or group of persons conditions which are in-compatible with the dignity of man”⁴⁰ (1(1)(d)).

The first form of discrimination in education presented addresses equality of access; the second description is clearly regarding quality, opposing the notion that any individual or group should be limited to education that is of an “inferior standard”; the third description focuses on the failure to maintain equality and coherence within and across (public and private) educational institutions and systems (and equity in schools and systems segregated by sex, religion or language (i.e., for religious and linguistic minorities); the last kind of discrimination explained is distinct from the rest because it is ambiguous yet remains to be the foundation for all other forms of discrimination. It is ambiguous, because how the state determines what is “[incompatible] with the dignity” of a human being is clearly subjective, especially when they are committing acts that are indeed incompatible with human dignity. Secondly, this statement implies that dignity or the “quality or state of being worthy of honor or respect” (*Oxford English Dictionary* (OED), 2013) is inherent, and therefore, every

⁴⁰ Reference to “man” in Article 1(1)(c) of CADE implies a “universal” reference to humankind, but it also reflects the language of the dominant discourse of the time. UDHR of 1948 and CADE of 1960 are the only two international instruments that include reference to “man” in the universal context, so the language referencing humankind evolved to be more inclusive and non-gendered as international human rights law discourses progressed.

preceding act of discrimination presented in the Convention would be an example of denying one's dignity.

While discrimination is defined in this Convention, education is loosely explained but remains undefined— “refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given” (UNESCO, 1960, Article 1(2)), suggesting education may include both formal and non-formal education systems and structures that are left to be interpreted and implemented by the state. In order to guarantee there is no discrimination in admission policies and procedures to educational institutions for any person or group, the Convention reminds states that discrimination regarding access may be resolved “by legislation where necessary” (Article 3(b)). Regarding access to higher education in the Convention, it should be “equally accessible to all on the basis of individual capacity” (Article 4(a)). Capacity is defined as the “mental or intellectual receiving power; ability to grasp or take in impressions, ideas, knowledge” and the “active power or force of mind; mental ability, talent” (OED, 2014). To grant access “on the basis of individual capacity,” therefore, implies every individual’s capacity is inherently equal and that all have equal opportunities in developing their capacities. To say that higher education is “equally accessible,” then, is misleading, as it disregards the unequal and inequitable opportunities that many minorities, indigenous peoples, and other underrepresented groups endure that prevent them from fully developing their individual capacities throughout their educational lives. Access in this Convention, therefore, is only loosely mentioned, and issues of equal or equitable access, in particular, are questionable.

Article 4, addressing the “equality of opportunity and treatment in the matter of education,” upholds that states must “ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent” (Article 4(b)). Likewise, “private educational institutions” must guarantee that they do not exist to exclude any group of peoples and that its education “conforms to such standards as may be laid down or approved by competent authorities” (Article 2(c)).

If public educational institutions such as universities and colleges are required to have “equivalent” standards and levels of quality, what if those standards and qualities are low across all federal higher education institutions in the country? How will private educational institutions compare then? How are quality and standards defined or understood in this regard? These are questions that are not addressed in the Convention. It would be negligent to claim that answers to such questions have been overlooked, however, because clearly, they are expected to be identified and addressed by the state—not to be dictated in the Convention. Such are the limitations of international law—they can only go so far, leaving the interpretation and implementation of such measures and standards into the realm of varying state governments.

Where do marginalized and vulnerable populations such as minorities and indigenous peoples stand when public education standards are low and access to private education is usually unlikely? If they choose to do so, “national minorities” (indigenous peoples are not explicitly mentioned in this Convention) have the option to “carry on their own educational activities, including the maintenance of schools, and depending on the educational policy of each state, the use or the teaching of their own language” (Article

5(1)(c)). This right, however, must not in any way deter minorities from participating in and understanding the “culture and language” of their communities and activities; nor should it affect questions of sovereignty. So maintaining the cultural identities and customs of minorities is one of the primary goals of education specific to minority groups. However, it is still somewhat unclear as to what is implied by quality and/or standards in this regard, especially for minorities, particularly since states must guarantee “that [minorities’] standard of education is not [to be] lower than the general standard laid down or approved by the competent authorities” (Article 5(1)(c)(ii)). Thus, these same “competent authorities” are determined and most likely employed by the state, and therefore, the state also determines the standards and defines the quality of education at all levels for all individuals, including minorities, within both public and private educational institutions. This section is significant for two reasons: 1) it is the only part of the convention that refers to “minorities” directly, and in this case, it names “national minorities” (even though the implicit accommodation of religious and linguistic minorities’ right to education is presented in Article 2); and 2) it is stated that minorities have a right to manage “*their own* [emphasis added] educational activities” suggests that segregated, minority-run educational institutions and systems are an “optional” (Article 5(1)(c)(iii)) alternative to traditional, state-run education programs. If primary education is to be “compulsory” and the “obligation to attend school [should be] prescribed by law,” then why are minority-run schools and systems not held to the same standards? Interestingly, indigenous peoples are not at all referenced in CADE. Indigenous issues and rights were formally introduced into international human rights law several decades later.

The states party to this Convention are held accountable to “ensuring equality of opportunity and treatment in education,” and for applying education for the:

[F]ull development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace (Article 5(a)).

Education, therefore, is not limited to social, political, and economic benefits, but to fostering a culture of peace and promoting moral respect and appreciation for human dignity and diversity.

International Convention on Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations General Assembly in 1965, and currently it has 176 state parties. ICERD is explicitly devoted to the elimination of racial discrimination. The Convention includes a preamble and 25 articles divided into three parts—the definition and scope of ICERD and states parties’ obligations; the establishment of the Committee on the Elimination of Racial Discrimination (CERD) and its role; and technical matters regarding the Convention and its parties.

Over a number of years, the international struggle against racial discrimination was closely associated with anti-colonialism sentiments. From the 1950s to the 1970s, as more countries in the Southern Hemisphere joined the United Nations as member states, new legislation was developing that directly impacted states from the “North” and “South,” including the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, the Declaration on the Elimination of All Forms of Racial Discrimination

of 1963, and the Declaration of Race and Racial Prejudice of 1978. According to the International Movement Against All Forms of Discrimination and Racism (IMADR) (2011), the main justification for adopting these declarations by the majority was to put an end to discriminatory acts in other states, “whereas the idea that discrimination could also exist in the domestic realm was largely ignored” (p. 1). An abrupt change in both minds and hearts was soon generated by soon-to-be catastrophic events:

The almost unanimous condemnation by states of apartheid as an institutionalized policy and practice in South Africa led to an important leap forward in the fight against discrimination. This was the belief that the racist practices of one state can be a legitimate concern of others, thus curtailing the principle of national sovereignty. It is in this historical context that ICERD was adopted in 1965 by the [General Assembly (GA)] with its clear reference to apartheid in Article 3 (IMADR, 2011, p. 1).

Given the historical context of ICERD, it is revealing how the evolution of perceptions and language might transmute and evolve over time with the hopes of paralleling an advancement of global knowledge and maturity on the part of the member states involved in the drafting, adopting, and entering into force of international treaties.

Although ICERD targets racial discrimination, the classification and/or identities of individuals based on “race, color, descent, or national or ethnic origin” are all recognized in this treaty. Hence, there is no direct reference to minorities and/or indigenous peoples in ICERD, but their inclusion is implied and their “equality before the law” is also explicitly stated (Article 5). Even if minorities are not identified as such in ICERD, they comprise,

according to Thornberry (2012), “one of the significant categories, perhaps the major category, of victims of racial discrimination” (p. 5).

Similarly, there is no direct reference to access to higher education in ICERD, but it can be assumed to be included in Article 5(e)(v), classified under economic, social and cultural rights: “The right to education and training.” Article 7 refers to the importance of education, but it also raises equal attention to teaching, culture and information:

[S]tates parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The urgency required of states “to adopt immediate and effective measures” specially in these education or knowledge-sharing-specific “fields” not only highlights the prioritizing of education, but its cultural relevance and capacity to thwart racial prejudice and discrimination and instead promote “understanding, tolerance and friendship” is palpable. Unfortunately, however, as often is the pattern with international instruments, the implications of what the measures actually entail and how they should be implemented are ambiguous. The qualities of education would be beneficial to highlight here. For instance, how “combating prejudices” is accomplished and how education, teaching, culture or information play a role in promoting racial amity is also unclear, leaving it open-ended for the state to interpret and implement as it pleases. Furthermore, since there are only two references to education as

noted above (and the Convention Against Discrimination in Education of 1960 is cross-referenced in the ICERD Preamble); there is no reference to the quality of that education, and as mentioned earlier, access is implied by suggesting that everyone has the right to education, but the reference to measures suggests that access for some groups based on race, for example, is dependent upon the unique circumstances within each country as determined by the state. So these measures are expected to address discriminatory practices that bar or challenge racial minorities to access education if state laws do not. The latter segment of this excerpt reveals a pattern commonly found within international instruments in order to maintain consistency and breadth from one instrument to another. The statement conveys the following idea: “Everything contained in this instrument, as well as all the preceding instruments mentioned here, apply to this instrument as well.”

Requiring that states parties can “adopt immediate and effective measures” to address racial discrimination within these fields infers that equitable measures can be taken to address discriminatory practices and prejudicial inequalities within spaces that promote economic, social and cultural rights such as higher educational institutions, for example. The Preamble also mandates that states “adopt all necessary measures” to eliminate all forms of racial discrimination, to take “practical measures.” In Article 2(2) states are called upon to take:

[S]pecial and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance

of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Thus in cases where vulnerable populations such as racial/ethnic minorities and indigenous peoples are treated unequally, *temporary* and practical special measures could be implemented in order to address the inequalities until the measures adopted have “resolved” them. Of course, the assessment of the racial inequality/discrimination (given that other identity classifications are not addressed here) that exists is made by the state as are the respective kind and duration of measures applied, since there are no specific descriptions of what these measures might be, but they may be included in optional protocols and/or CERD recommendations.

International Covenant on Civil and Political Rights

Adopted in 1966, 167 member states are currently party to the International Covenant on Civil and Political Rights (ICCPR). Like ICERD and its complementary treaty,⁴¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR), ICCPR is one of most cross-referenced international treaties. It consists of a preamble and 53 articles that are divided into six parts that address the following: Right to self-determination; states parties’ obligation to uphold legislation regarding the rights in the Covenant; list of rights protected in the Covenant; establishment and role of the Human Rights Committee (HRC);⁴² Covenant adherence to United Nations procedures; and monitoring and technical aspects of the treaty. While ICCPR is referenced in other treaties

⁴¹ ICCPR and ICESCR were both adopted on December 16, 1966 by the United Nations General Assembly and entered into force nearly a decade later when the necessary 35 States parties signed the treaties.

⁴² The Human Rights Committee (HRC) is comprised of 18 elected independent experts that monitor the implementation of the ICCPR by its States parties (as dictated in articles 28-39 of the Covenant.

relevant to minorities and indigenous peoples' equal and equitable access to higher education, there is no single reference to higher learning—explicit nor implicit. However, the Preamble does include a reference to the Universal Declaration of Human Rights (UDHR), which does explicitly address equal access to higher education on the basis of merit (and will be discussed further in the following section on non-binding instruments).

As Thornberry (2012) states, Article 27 of ICCPR is an example of “more limited progress of minority rights at the UN level” (p. 1):

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

This article is the precursor for the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities adopted in 1992 and set the standard for how minorities would be identified and enjoy their rights (with some minor, yet advanced changes found in the progeny instrument). The language herein sways away from the historically notable content of UN discussions addressing the “question of minorities” or the “problem of minorities,” which was originally used in one of the resolutions simultaneously adopted by the United Nations General Assembly (UNGA) with the Universal Declaration of Human Rights on December 10, 1948, titled “Fate of Minorities” (A/RES/3/217 C). Aside from the categories of minorities presented here, minorities are not defined anywhere in the Covenant. Nonetheless, the language used in this article focuses on a *collective* identity of minorities or more so their collective rights, echoing this collective theme through phrases and words such as “in community with the other members of their

group” and the right to enjoy and practice “their own” culture, language, and religion. Such a pronoun reference also positions minorities in the stance of the “Other,” denying their inherent individual rights and dignity as human beings. Furthermore, this article also leaves room for interpretation, particularly on the part of the state to identify and address the status of minorities in its country/territory. The opening words of the article begins “In those states which . . . minorities exist,” leaving it open for states to declare minorities do not in fact “exist” within their “jurisdiction.” *How* the state identifies and defines minority populations is rather uncertain, as are the expectations of the state in this regard. The Committee on the Elimination of Racial Discrimination (CERD) regularly requests disaggregated data (from states parties) on minorities and is “unimpressed” by states’ claims that they in fact have no minorities under their jurisdiction, and therefore, there is no discrimination committed against them (Thornberry, 2012).

Equality and oneness of humankind is emphasized, however, as a common theme in the Covenant. It is evident that all people have a right to self-determination, meaning that “they can freely determine their political status, and freely pursue their economic, social and cultural development” (Article 1(1)). To emphasize that people can “freely” determine and pursue their economic, social and cultural welfare would suggest that the state must ensure it and take no action that would deny such self-determination.

Article 3 addresses the equality of women and men, and Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against

discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 also indirectly refers to safeguarding the rights of minorities and indigenous peoples, among all other groups, and “the law,” in this instance, concurrently refers to state law and international law.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted and opened for signature on December 16, 1966 by the General Assembly. In accordance with Article 27 of the Covenant, it was entered into force⁴³ on January 3, 1976.⁴⁴ In this Covenant, economic, social and cultural rights include: access to food, water, health care, shelter, and education; labor/workplace; social security; family life; and participation in cultural life (Office of the United Nations High Commissioner for Human Rights, 2008). Like ICCPR, ICESCR raises attention to self-determination, but it is also the first treaty to have introduced the unique clause of “progressive realization.” Progressive realization is:

[A] central aspect of states’ obligations in connection with economic, social and cultural rights under international human rights treaties. At its core is the obligation to take appropriate measures towards the full realization of economic, social and cultural rights to the maximum of their available resources (Office of the United Nations High Commissioner for Human Rights, 2008, p. 13).

⁴³ Otherwise known as “entry into force,” a binding treaty does not enter into force when it is initially adopted. “Typically, the provisions of the treaty determine the date on which the treaty enters into force, often at a specified time following its ratification or accession by a fixed number of states” (United Nations Office of Legal Affairs, 1999).

⁴⁴ The opening of most binding treaties begins with the history/record of when the treaty was drafted, adopted, and went into force. Once a treaty is adopted by the General Assembly, a minimum number of signatures are required from states parties before it is entered into force.

Thus states parties are called upon concerning their obligation and duty to carry out their commitment, ensuring economic, social and cultural rights of the people living within their respective jurisdictions. The concept of progressive realization is often misinterpreted to suggest that only HDCs with sufficient resources are required to protect economic, social and cultural rights, but this understanding is inaccurate since all states parties to the Covenant are obliged to take immediate action in ensuring that these rights are protected. Therefore, there should be no exception to protecting the rights of indigenous peoples and minorities. If a state has limited access to resources or a lack of resources, such conditions “cannot justify inaction or indefinite postponement of measures to implement these rights (United Nations High Commissioner for Human Rights, 2008, p. 14). Article 2(1) of ICESCR further defines progressive realization:

Each state party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 4 of the Convention on the Rights of the Child (CRC)⁴⁵ and Article 4(2) of the Convention on the Rights of Persons with Disabilities (CRPD)⁴⁶ also include the progressive

⁴⁵ Article 4 of CRC: “States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

⁴⁶ Article 4(2) of CRPD: “With regard to economic, social and cultural rights, each State party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.”

realization clause regarding states' obligations to protecting economic, social and cultural rights.

One of the crucial categories of economic, social and cultural rights that states are obligated to protect is the right to education. Article 13 of ICESCR maintains that states parties must guarantee “the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.” The purpose of education is also demonstrated in Article 13 indicating that it “shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace,” which is nearly an exact duplication of Article 5 in CADE: education shall “promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace” (Article 5(1)(a)). The reference to racial, ethnic or religious groups is understood to be an implied inclusion of minorities and indigenous peoples among “everyone” who has a right to education, but is that sufficient when “everyone” is not recognized nor treated equally?

The right to education at all formal levels of education is also explicit, including the right to education and equal access: “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education” (Article 13(2)(c)). In treaties where equal access to higher education is clearly stated, such access is determinant on an individual's “merit” or “capacity” even “by every appropriate means” or “measures” as necessary. ICESCR is the

first and only treaty, however, that suggests measures should be taken by the state to promote *free* education at the tertiary level, albeit progressively.

Regarding the question of quality education, Article 13(2)(e) requires that state parties establish an “adequate fellowship system” in the development of schools and systems and that the “material conditions of teaching staff shall be continuously improved.” There is clearly an emphasis on the material resources available for teacher development as well as the progressive efforts to improve the quality and standards of such resources; and the interpretation of these “material conditions” is for the state to decide. Along similar lines, Articles 13(3) and 13(4) indicate that the educational standards must meet “minimum standards as may be laid down by the state.” This notion of “minimum standards” is questionable, as the Covenant does not prescribe nor define what minimum standards require at the least, thus reiterating that interpretation (and consequently, implementation) is determined by the state.

Convention on the Elimination of All Forms of Discrimination Against Women

Since its establishment, the Commission on the Status of Women (CSW) was formed to raise attention to the global necessity in addressing discrimination against women, which had been neglected for far too long and thus long overdue within the realm of international human rights law discourse. In November 1967, UNGA adopted the Declaration on the Elimination of Discrimination against Women, but as the 1960s marked a heightened sense of consciousness on the discrimination of women worldwide, a non-binding instrument was considered as insufficient in addressing the grave disparities committed against women and girls. Five years following the adoption of the Declaration, the CSW approached the Secretary-General proposing that UN Member states consider transforming the Declaration

into a convention. After working groups within the Commission finalized a draft of the Convention on the Elimination of All Forms of Discrimination Against Women, it was reviewed and adopted by UNGA on December 18, 1979. The Convention on the Elimination of All Forms of Discrimination Against Women, known as “CEDAW,” is the first legally-binding instrument of its kind that is devoted to promoting the equality of women and men and eliminating all kinds of discrimination against women. To date, 187 states parties have either ratified or signed the Convention. Although nearly 200 countries have ratified and/or signed the Convention, more than 50 countries ratified CEDAW with declarations, objections, and reservations. Thirty-eight of those 50 states also openly reject Article 29 of the Convention, which calls for an arbitration to be carried out if two or more states parties are in disagreement over the interpretation and execution of the Convention (United Nations, 2014).

While women are the targeted group of focus in CEDAW, the Convention still indicates an awareness of the diversity that exists among various groups and peoples. Minorities and indigenous peoples are not directly referenced, but in the Preamble, the implications of oppression and injustice against vulnerable populations can be clearly inferred:

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of states is essential to the full enjoyment of the rights of men and women.

References to apartheid, racism, colonialism, domination and the like describe events that significant numbers of minorities and indigenous peoples have faced worldwide, and to be a

woman from a minority and/or indigenous group, increases the probability of being vulnerable to injustice and oppression of any kind (Minority Rights Group International, 2011).

In reference to education, CEDAW does address equality of access to all levels of education. Ensuring that women have equal rights with men in the field of education, states are to ensure that all have access to education as well as “for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education” (Article 10(a)), hinting at formal educational institutions. The subsequent article also ensures that access to the same materials and resources (i.e., curricula, exams, qualified teaching staff) “of the same standard and school premises and equipment of the same quality” (Article 10(b)). The educational standards and level of quality are not defined in CEDAW, however. The emphasis is more on the men and women having equal access to the same educational resources. Measures, including “temporary special measures,” should be taken by the state if necessary in order to ensure that “non-discrimination and equal opportunities” are available to women and girls. CEDAW is the first international instrument—binding or non-binding—that introduced “temporary special measures,” which are also translated into equity-resolving actions, programs, policies, or legislation. In higher education, for example, such measures may include income/race/ethnicity-based affirmative action and quota laws or policies for admission.

Convention Concerning Indigenous and Tribal Peoples (ILO No. 169)

The first Convention Concerning Indigenous and Tribal Peoples was adopted by the International Labor Organization (ILO) in 1957. The Convention Concerning Indigenous

and Tribal Peoples, 1989 (ILO 169) is an amended, updated version of the 1957 Convention. ILO 169 is also the first and only legally-binding treaty that is intentionally geared towards protecting indigenous peoples. Prior to its adoption, indigenous peoples' rights and recognition were "visibly invisible" from international human rights law, reflecting a widely systemic disregard for the precarious status of indigenous peoples and their inclusion at the international human rights table. Its legal potency, however, is dependent upon the number of parties that have ratified the treaty. Only 20 states have currently ratified ILO 169, most of which are from Central and Southern America.

As the content of ILO 169 is specific to indigenous peoples, there is neither direct nor indirect reference to minorities or minority groups. Higher education is not explicitly highlighted in the Convention either, but equal and equitable access to "all levels" of education is mandated for all states parties to enforce as directed in Article 26: "Measures shall be taken to ensure that members of the peoples concerned [indigenous peoples] have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community." These measures are left to the discretion of the state, but prior to making any decisions regarding the welfare and security of indigenous peoples, the state must consult with indigenous peoples so that they may also participate in the decision-making processes that aim to promote and secure the rights of their indigenous communities. States must work "in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations" (Article 27(1)), so that opportunities for self-preservation are available to indigenous peoples even through education. A cooperative relationship between the state and its indigenous communities is

conducive to safeguarding their self-preservation and will require working closely with those who “are in most direct contact with the peoples concerned,” aiming to eliminate any form of discrimination, inaccuracy or prejudice, which may manifest in educational materials and/or resources; and not only must indigenous peoples be consulted, but the state must also “make them known of their rights regarding education in their own familiar traditions and cultures” (Article 30).

This emphasis on using indigenous traditions and cultures to make indigenous peoples aware of their rights reinforces this theme of self-preservation found throughout ILO 169. As in the case of several other treaties presented earlier regarding minority rights and protections, indigenous peoples also have the right to establish their own schools, but the state must ensure that these schools “meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose” (Article 27(3)). The question of quality regarding the educational institutions is raised, but again, it is up to the state (in consultation with its indigenous communities) to determine what those minimum standards are. Quality and standards of various spheres of indigenous livelihood—“improvement of the conditions of life and work and levels of health and education” must become a “matter of priority in plans for the overall economic development of areas [indigenous peoples] inhabit” (Article 7(2)).

Convention on the Rights of the Child

Marking the 30-year anniversary of the Declaration on the Rights of the Child, the Convention on the Rights of the Child (CRC) was adopted by the United Nations General Assembly on November 20, 1989, and it is the widely most recognized treaty with a total of 193 states party to it, including every United Nations member state except Somalia, Sudan,

and the United States. Unless otherwise determined by the state, the terms “child” and “children” in the CRC refers to all people under 18 years of age.

Similar to other treaties, in the Preamble of the CRC, there is reference to prohibition of discrimination based on race, color, ethnicity, religion, sex, national or social origin, and so on, and the only direct reference to minorities and indigenous peoples is specific to children (for obvious reasons given the nature of the Convention):

In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language (Article 30).

Clearly, this notion of identity preservation is vital for protecting the rights of minorities and indigenous peoples, and the state must take measures that will secure its continued development among all groups. The CRC furthermore offers an explanation of the purpose of education in ensuring that children belonging to minority groups and indigenous communities are not denied such rights to celebrate and practice their own cultural and social customs, languages, and traditions and preserve their unique identities. It calls for education to guide:

The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own (Article 29(c)).

There are a several references to equal and equitable access to education throughout the convention. Article 23(3) requires states to implement measures and procedures that ensure “effective access” to education for children with disabilities; Article 24(e) calls for “all segments of society, in particular parents and children, are informed, have access to education” particularly for purposes of ensuring good health and nutrition; and Articles 28(1)(a-e) all refer to education at various levels and types of schooling. Although the CRC focuses on children for the most part, the contents of the Convention move beyond discussions limited to pre-primary, primary, and secondary schooling and even address the necessary enforcement of both equal and equitable access to higher education. Article 28(1)(c) requires that the state: “Make higher education accessible to all on the basis of capacity by every appropriate means,” which echoes Article 4(a) of the Convention Against Discrimination in Education and Article 13(2)(c) of ICESCR but contrasts with the emphasis on merit, as has been dictated (and frequently cited) in the Universal Declaration of Human Rights.

A clear shift has occurred in language regarding access since the adoption of UDHR from “merit” to “capacity,” specifically regarding higher education. The primary difference, however, between the CRC and these other instruments is that it not only speaks to states ensuring access for “all,” but more importantly, “by every appropriate means,” suggesting that the adoption of special measures—be they temporary or permanent—is also acceptable in guaranteeing equitable access to higher education for those who may not be able to achieve equal access on the basis of capacity.

Equality and equity in education are not only relevant to matters of access in the CRC. As a matter of fact, education is also understood to be a tool for promoting equality,

equity and justice within societies preparing children for “responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” (Article 29(d)). From this perspective, the purpose of education holds great value and benefit as it fosters unity in diversity.

The importance of quality education in the CRC, however, is a different story. Again, as discovered in previous treaties, there are no references to quality of education. Rather, “education given in such institutions shall conform to such minimum standards as may be laid down by the State” (Article 29(2)). If educational institutions must at least meet the lowest level of education standards set by the state, then it is likely that the level of education provided across all educational institutions will be of varying standards, therefore affecting the quality of education, as some education institutions may choose to adhere to more than just the minimum standards, while others may barely even meet them. This still leaves some ambiguity regarding if and how states can be held accountable in ensuring high quality level education across all levels.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted on December 13, 2006 during the 61st session of the General Assembly. There are nearly 650 million people worldwide who are living with a disability—approximately 10% of the world’s population (United Nations Department of Public Information, 2006). In the CRPD, the definition of “disability” is not understood to be absolute, but rather, it is “an evolving concept . . . that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in

society on an equal basis with others” (Preamble). Thus, the more barriers or obstacles one faces, the more disabilities one is susceptible to. “Persons with disabilities” are defined as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (Article 1). Persons with disabilities, therefore, are understood to be those people who are living with a disability that gradually progresses over time, especially if there are no means or opportunities in preventing it from evolving. CRPD was put in place to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” (Article 1). People with disabilities often lack access to opportunities that the majority population enjoys such as receiving a quality education. For persons with disabilities belonging to minority groups and indigenous communities, the risks of vulnerability to further oppression and marginalization increase due to the presence of multiple obstacles to their attainment of equal and equitable rights, particularly due to the intersectionality of such socially-constructed identities (e.g., indigenous woman with disability).

The overarching principles introduced in Article 3 offer a resounding harmony of priorities familiar to human rights and social justice discourses pertaining to disadvantaged groups such as indigenous peoples and minorities. The principles include: recognition of “inherent dignity” and “individual autonomy” (3(a)); “non-discrimination” (3(b)); “full and effective participation and inclusion within society” (3(c)); “respect for difference” and “acceptance” of peoples as being “part of human diversity and humanity” (3(d)); “equality of opportunity” (3(e)); “accessibility” (3(f)); equality of the sexes (3(g)); and “respect for

[peoples'] evolving capacities” and the right to preservation of their identities (3(h)). These same principles are similar to the national objectives cited in the World Declaration on Higher Education, and some of these principles are also implied in other international instruments that pertain to rights and protections of indigenous peoples and minority rights including ICERD, ICCPR, CEDAW, ILO 169, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Declaration on the Rights of Indigenous Peoples, for example.

While indigenous peoples with disabilities are explicitly mentioned in the Convention, disabled persons belonging to minority groups are clearly implied: “[those] subject to multiple or aggravated forms of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status” (Preamble(p)). The preamble is the only section of CRPD where reference to these respective groups is made, but there are also a few references to identity preservation and protection of persons with disabilities that resonate with similar discourses on indigenous and minority-related discourses; one of them, in particular, is specific to the role of education calling upon states to carry out: “Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community” (Article 24(3)(b)). Article 24(1) addresses inclusive, equal opportunities without discrimination for all persons with disabilities to access education at all levels. Access to “general tertiary education” is also recognized (Article 24(5)), which is also quite a broad and blanket statement, because “general” higher education means just that, and in the same instance, it leaves room for various interpretations and meanings; this suggests that access to higher education is not as significant nor as important as primary and secondary education.

Calling for institutions and systems facilitated by or in collaboration with persons with disabilities is also missing unlike discourses on indigenous and minority education.

Furthermore, raising the question of quality is only limited to education at the primary and secondary levels, but not higher education (Article 24(2)(b)), which is not at all surprising since most other international treaties barely—if at all—mention higher education.

Although there are no other education-specific references to equal or equitable access, broader references exist (in addition to the principles of the Convention introduced in Article 3). Articles 5(1) through 5(4) focus on the necessity of promoting equality and eliminating discrimination for persons with disabilities. Promoting equitable access to education is also suggested in CRPD mandating states parties to take: “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” (Article 4(1)(b)) and “appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society” (Article 30(2)). These “appropriate measures” echoes ILO 169’s inclusion of “appropriate” measures in education for indigenous peoples, and it is similar to references “necessary measures” in CADE and “immediate and effective measures” in ICERD, for example. Again, the ambiguity of “appropriate” is left to the state to decide exactly what that means, and since nothing regarding equal and equitable access to higher education and the quality of such education is discussed in CRPD, considerations and specifications for such measures at the tertiary level are also blurred.

Non-Binding Instruments

Universal Declaration of Human Rights

Compared to other international instruments adopted by the United Nations General Assembly and any of its agencies, the Universal Declaration of Human Rights is most likely the most ambiguous and generalized of them all, but it most likely has to do with the history and context of its drafting and adoption. Following the end of the Second World War, select world leaders thought it would be appropriate to “complement” the United Nations Charter⁴⁷ with “a road map to guarantee the rights of every individual everywhere” (United Nations, 2014).

As a matter of fact, the language is so general or “universal” that a related inclusive word such as “everyone” is mentioned 30 times throughout the statement (and the Declaration only has 30 articles attached to it). Although only some articles include references to “everyone,” the frequency of the usage of the term implies that it is sufficient to address all individuals without any specific reference to categorized differences such as gender, race, ethnicity, religion, language, ideology, and so on. Such distinguishing characteristics are only addressed twice in the Universal Declaration of Human Rights—in Article 2⁴⁸ and Article 16.⁴⁹ Equality, therefore, is the overarching theme of this Declaration, which is a great concept in theory, but de jure equality and de facto equality are at odds. The

⁴⁷ Originally drafted and signed on June 26, 1945, the Charter of the United Nations is a constitution of the United Nations system, and it is occasionally amended to cover new policies introduced in the United Nations. The full text of the UN Charter can be accessed here: <http://www.un.org/en/documents/charter/>.

⁴⁸ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

⁴⁹ “(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”

reality of the physical world today is that issues of equity must also be acknowledged and taken into consideration. The original drafters of UDHR were eight men from Australia, Canada, Chile, China, France, Lebanon, U.S.S.R., and United Kingdom, and one woman from the United States, respectively, who had a limited scope and understanding of the implications of international human rights during that time. Not one minority or indigenous representative was among them. The broad scope of rights dictated in UDHR, therefore, have been expanded over time with the drafting and adoption of more international human rights instruments, including those instruments specific to particular peoples and groups (i.e., women, migrants, persons with disabilities, children, indigenous peoples, minorities, etc.). The Convention Against Discrimination in Education and the World Declaration on Higher Education are examples of such language being expanded and narrowed to focus more specifically on educational rights, for instance.

Article 26(1) of the Universal Declaration of Human Rights states: “higher education shall be equally accessible to all on the basis of merit.” Thus, individual merit is considered to be the sole basis upon which access to higher education should be granted to *all* people in this Declaration. Unfortunately, however, the simplistic inference conveyed in this article fails to acknowledge the unequal and inequitable challenges that so many disadvantaged populations endure regarding access to pre-primary, primary, and secondary schooling or other forms of formal or non-formal education for that matter. Merit is “the quality of being particularly good or worthy, especially so as to deserve praise or reward” (OED, 2015). CADE, ICESCR, and CRC call for higher education to be “equally accessible to all on the basis of individual capacity” (Article 4(a)), and in the preamble, the World Declaration on Higher Education cites both merit *and* individual capacity from the Universal Declaration of

Human Rights and the Convention Against Discrimination in Education, respectively. In addition to merit and capacity, the World Declaration also calls for states to consider equitable criteria such as applicants' demonstrated "efforts, perseverance and devotion" to enroll in higher education institutions (Article 3(a)). UDHR, on the other hand, does not even address equitable access to higher education; nor does it mention anything about the level of quality of education at any level.

Declaration on Race and Racial Prejudice⁵⁰

A non-binding agreement, the Declaration on Race and Racial Prejudice (DRRP) was adopted by UNESCO on November 27, 1978, more than a decade after the binding ICERD treaty was adopted by the UN General Assembly. The former is an extension of the latter in terms of analysis and implications, and although both instruments focus on abolishing racism and racial discrimination and prejudice, ICERD is much broader in content and focus than DRRP, which is common of most international treaties when compared to non-binding instruments such as declarations and recommendations. December 10, 1978 marked the launching of the Decade for Action to Combat Racism and Racial Discrimination, and the adoption of DRRP by the General Conference of UNESCO was an effort to support the implementation of the program of the Decade, as defined by the UN General Assembly during its twenty-eighth session. The themes addressed during the Decade and in DRRP include: apartheid, decolonization, foreign domination, colonialism, and racial discrimination. The flow of DRRP's preamble, particularly content regarding the inspiration behind and purpose of the Declaration and the importance of "making the international

⁵⁰ Racism is defined in Articles 2(1) – 2(3).

community a universal and diversified whole,” relays an understanding of the cultural and social constructs that have permeated societies worldwide for centuries and the imperative to abolish their contentious and divisive forces.

In spite of DRRP being relevant to these particular issues that both indigenous peoples and minority groups historically and presently face, their inclusion and rights are inferred in Article 3 of the Declaration:

Any distinction, exclusion, restriction or preference based on race, color, ethnic or national origin or religious intolerance motivated by racist considerations, which destroys or compromises the sovereign equality of States and the right of peoples to self-determination, or which limits in an arbitrary or discriminatory manner the right of every human being and group to full development is incompatible with the requirements of an international order which is just and guarantees respect for human rights. . . .

By the right to “full development” is meant that all peoples and groups are required “equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide” (Article 3). “Full development” also echoes this theme of inherent dignity and humanity of all. Among these “means of personal and collective advancement” includes the right of equal access to education, whereas ICERD does not expand beyond a single general reference to education even though it is specific to focusing on the rights of such marginalized peoples and groups.

Two of the three subsections of Article 5 of DRRP are devoted to the topic of education. Article 5(1) highlights the interconnected role of culture and education “in its broadest sense” not only for promoting equal rights, but also its contribution to adaptation,

self-determination, respect and appreciation for diversity, development of distinct cultural communities, and enrichment and preservation of cultural identities. Article 5(2) targets the formal education sector, calling upon states, education systems, and “the entire teaching profession” to ensure that all

educational resources of all countries are used to combat racism, more especially by ensuring that curricula and textbooks include scientific and ethical considerations concerning human unity and diversity and that no invidious distinctions are made with regard to any people; by training teachers to achieve these ends. . . .

Similar to the World Declaration on Higher Education and the Framework for Priority Action, there is an expectation at the national level that educational resources promote diversity, accurate, equitable, non-discriminatory, and relevant. Furthermore, access to such resources is also expected to be equal “by making the resources of the educational system available to all groups of the population without racial restriction or discrimination” and also equitable “by taking appropriate steps to remedy the handicaps from which certain racial or ethnic groups suffer with regard to their level of education and standard of living” (Article 5(2)). These “appropriate steps” or measures to be taken to accommodate underrepresented groups will also benefit lifelong and intergenerational educational pursuits “to prevent such handicaps from being passed on to children” (Article 5(2)). The sustainable purpose and role of education is likewise emphasized further in the World Declaration on Higher Education. Clearly, “education” in this sense refers to education of all levels and types without distinction. Article 6, however, offers more statements on education, which could very likely be specifically associated with higher levels of learning.

In Article 6(2), again states are required to “all appropriate steps,” particularly through the adoption and enforcement of policies and laws to “prevent, prohibit and eradicate” all kinds of racism, racial prejudice and discrimination in spheres of society including education. In particular, such states should “encourage the dissemination of knowledge and the findings of appropriate research in natural and social sciences on the causes and prevention of racial prejudice and racist attitudes” based on principles from UDHR and ICCPR, which can also be developed within higher education systems and institutions with sufficient capacities and resources. Furthermore, since states’ laws are understood to be limited in their strengths and fall short of fully achieving racial equality and justice on their own, administrative bodies responsible for investigating and responding to acts of racial discrimination must be established, which rely on “broadly based education and research programs designed to combat racial prejudice and racial discrimination and by programs of positive political, social, educational and cultural measures calculated to promote genuine mutual respect among groups” (Article 6(3)). It is probable that higher education institutions could house and support such education and research programs, but this does not suggest that all states may consider them as suitable centers for such programs, especially since HEIs are not specifically mentioned. Moreover, methods on how to measure such standards are absent, revealing there are no proposed international measures in international human rights law.

The ambiguous references to specific levels of education also surface in education-related discourse regarding quality. There is no specific reference to this “broad” education, except at the beginning of DRRP, where it is generally stated: “All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social,

economic, cultural and political development” (Article 1(4)). The “highest level” of intellectual development is the closest reference to high-quality education that can be found in the entire Declaration. In its entirety, however, this statement disregards the reality that a fraction of the 650 million people in the world living with disabilities may very likely have a long-term mental or intellectual impairment that would prevent them from possessing such “equal faculties for attaining” superior levels of development, so the question of quality education, therefore, is moot if it does not include all marginalized populations. Whereas DRRP targets racial discrimination mostly experienced by indigenous peoples and minority groups, discourses on education that omit references to quality and relevance fall short of addressing the importance of equitable access to education.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Religious Belief

The UDHR of 1948 was the first international instrument to introduce the right to religion or religious belief. Nearly two decades later, ICCPR also included a nearly identical article to that of UDHR. Table 6.1 below provides a comparative presentation of both articles in each instrument (the textual differences between the two are highlighted in boldface type)—both under Article 18—one of them non-binding yet representing the foundation of all international instruments to come, and the other, a binding instrument highly relevant to the rights of minorities. Despite the time difference between the two, there are very subtle differences between the two articles in terms of content, language, and meaning. The UDHR article begins with “Everyone has the right,” and

Table 6.1: Article 18 Comparison on the Right to Religion or Belief in UDHR and ICCPR

Article 18 of UDHR (1948)	Article 18(1) of ICCPR (1966)
“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”	“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice , and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

Article 18 of ICCPR begins: “Everyone shall have the right,” shifting from an implied inherent right to religion and belief to a right that must be granted (by the state). The original wording regarding the right “to change his religion or belief” in UDHR was altered in ICCPR to the right to “have or adopt a religion or belief of his choice,” correcting the assumption that not everyone has a religion or belief as implied in UDHR by the word “change.” Practicing a religion or belief “alone” was changed to “individually” (in ICCPR) to clarify the distinction between individual and group rights, which is emphasized in the ICCPR. Other than these few changes, there is not much of a difference regarding the right to religion or belief in either of the two instruments. Nonetheless, the near identical wording between the two articles was inadvertent, however.

In 1962, between the adoption of UDHR and ICCPR, the General Assembly drafted a resolution requesting the Economic and Social Council (ECOSOC) to prepare a draft declaration for its eighteenth session (1963) and a draft convention at its twentieth session (1965)—both on the elimination of all forms of religious intolerance. Due to disagreements between state representatives’ regarding the content of the declaration and convention, a draft declaration was not adopted by the UNGA until nearly 20 years later on November 25,

1981. Thus, since the draft declaration was finalized much later than expected, the wording of Article 18(1) of ICCPR relied solely on the content of Article 18 of UDHR for consistency instead. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Religious Belief (Declaration on Religion or Belief)—the shortest international instrument analyzed here (it only contains eight articles)—was adopted on its own, as there was no convention concurrently drafted due to the endured disputation and extended length of time it took in drafting and adopting the declaration alone. Since it is not a convention, it clearly does not retain the same “legal status” of a convention. Yet, it still has legal effect, “mainly due to the content and language of the 1981 Declaration as well as the evolution it has gone through since its adoption” (Tahzib, 1995).

For instance, Article 1(1) of the Declaration on Religion or Religious Belief is a near exact duplication of Article 18 of ICCPR. The only difference lies in the omission of the ICCPR article words “or to adopt” in the Declaration. So the influence of legally-binding conventions is clearly evident in the Declaration on Religion or Belief. The declaration also highlights themes found in other binding international instruments, including emphasis on the requirement to uphold non-discrimination (discrimination is addressed on 11 separate occasions in the Declaration). The Preamble echoes the necessity of non-discrimination in addressed historically oppressive ideologies and regimes: “freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination.” The right to religion and belief, therefore, is assumed to promote peace, justice, and amity, while simultaneously eradicating forces that would prevent these outcomes (i.e., “ideologies or practices of colonialism and racial discrimination). In other

words, discrimination against one minority group is interconnected to discrimination against other groups.

Carrying on the theme of anti-discrimination, Article 2(1) emphasizes: “No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs,” and educational agencies and institutions—public or private—fall under the categories of “State” and “institutions” (including higher education institutions), respectively. Article 2(2) provides a definition of “intolerance and discrimination based on religion or belief” underlying the Declaration:

[It] means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

This definition of intolerance and discrimination based on religion or belief is rather comprehensive, addressing both negative and “positive” forms (i.e., “preference”) of discrimination and intolerance. Furthermore, the definition highlights that it makes no difference whether intolerance and discrimination are the driving motivation behind an act or if they are an adverse effect of some action or measure (usually taken by the state). The latter refers to the “nullification or impairment,” a three-word combination that is often found in international trade law, particularly through the World Trade Organization’s (WTO) General Agreement on Tariffs and Trades (GATT). Hence in this Declaration, the usage of nullification or impairment which usually refers to the adverse impact on trade flows can be translated to the laws or policies adopted and enforced by state governments that result in one or more forms of intolerance and discrimination.

Since any of these forms of intolerance and discrimination are prohibited, therefore, they are applicable to educational institutions at all levels as well. This article is simultaneously problematic, however, since the ultimate decision of enforcing this article (and all other rights mentioned in all international instruments, as discussed earlier) must be determined by the state, and in many instances, the state itself has been responsible for exemplifying acts of intolerance and discrimination against ethnic, linguistic, national, religious minorities, and indigenous peoples, to name a few groups, as indicated with the use of “nullification or impairment.” Unlike any other international instrument studied thus far, though, Article 4 of the Declaration indicates that not only are states required to take “effective measures” to address any acts of intolerance or discrimination based on religion or religious belief (Article 4(1)), but states must also “make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter” (Article 4(2)). Instead of proposing measures, the Declaration moves far beyond such a notion, suggesting the amendment of state legislation. States must “make all efforts”—exhaustive efforts in order to ensure that their legislation prohibits any form of discrimination. This is unique for an international instrument to not only recognize this reality, but to also hold states accountable for their flaws and failures, particularly through legislative measures, which includes those specific to the higher education sector.

It is clear, however, that reference to higher education and general education is far from a dominant feature in the Declaration on Religion or Belief. Aside from the implicit references to education that were mentioned, Articles 5(1) and 5(2) address education—exclusively. However, they are not relevant to higher education, particularly since the focus

of education is specific to “the child” rather than “all” or “everyone,” for example. The emphasis on children is reinforced by the rights of parents and “legal guardians” to raise them in the manner in which they see fit. Additionally, references to education that are made are specific to raising of children and morality: “have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up” (Article 5(1)) and religious education:

Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle (Article 5(2)).

While the World Declaration on Higher Education does emphasize the necessity of calling upon the moral and spiritual capacities of higher education institutions in addition to their economic, cultural and social indicators of growth, Articles 5(1-5) of the Declaration on Religion or Belief on the religious rearing, learning, and teaching of children specifically.

There is no particular relevance to any other form of education or age group in the Declaration. Furthermore, there is no mention of the right to establish educational institutions, as indicated in the Declaration on the Rights of Minorities, which was adopted 11 years later. As a matter of fact, religious minorities are not at all mentioned in the Declaration on Religion or Belief even though they are introduced in ICCPR (Article 27). Given the historical omission of indigenous peoples in earlier international instruments, it was not surprising to learn that mention of indigenous spiritual traditions and beliefs were also absent from the Declaration. Due to the difficulty ECOSOC endured in finalizing a

draft declaration in a timely manner, the consequential brevity and limited content indicate that this is one of the weakest international instruments—in depth and scope—relevant to the rights of minorities and indigenous peoples, particularly their right to higher education or education in general.

Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (heretofore referred to as “Declaration on the Rights of Minorities”) was drafted and finally adopted in December 1992 to expand upon the first-ever reference to minorities in Article 27 of ICCPR. Article 1 of the Declaration on the Rights of Minorities immediately calls for states to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.” There is concentrated language, therefore, on protection of the existence and identity of minorities in the first article, emphasizing their collective rights. As mentioned on several occasions, the international context for minority classification is currently based on ethnic, linguistic, national, or religious distinctions. This does not at all imply that other disadvantaged groups are not recognized in international human rights law, however. On the contrary, this is why other international instruments have been adopted, including: Declaration on the Rights of Indigenous Peoples, Convention on the Protection of All Migrant Workers and Members of Their Families, Convention on the Elimination of All Forms of Discrimination Against Women, and Human Rights Council Resolution 17/19 on Human rights, Sexual orientation and Gender identity, to name a few. Despite the extent of the diversity of peoples and

groups acknowledged within international human rights, though, the term “minority” is still limited to only four distinct groups according to language found in both binding and non-binding international instruments, and thus, indigenous peoples are not identified as “minorities” in this context (nor are they acknowledged in ICCPR), and racial minorities (excluding indigenous peoples) are often identified under the category of “ethnic minorities.” Despite the classifications of minorities presented in this Declaration and ICCPR, there are no definitions for what “minority” means. Thornberry (2012), who participated in the drafting process of the Declaration on the Rights of Minorities on behalf of Minority Rights Group, mentioned that proposed definitions for “minority” were discussed at various stages of the drafting process, but none of them made it into the final draft. Thus, the four descriptors—ethnic, national, linguistic, and religious—were considered to be sufficient for most of the delegations that participated in the drafting of the Declaration, believing that they were broad enough in scope (Thornberry, 2012).

In ICCPR, the rights of minorities are addressed solely as collective rights. In the Declaration on the Rights of Minorities, however, individual rights are far more pronounced. The individualistic language of “persons belonging to . . . minorities” is a pattern throughout the instrument—a total of 26 times. Therefore, collective terms such as “protection of minorities” or “protecting minorities” have only a few occurrences in the text.

Recognizing the vulnerable case of people belonging to minority groups, all five sections of Article 4 of the Declaration calls for states to take measures “where required” or as “appropriate” in order for all minorities to “exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law” (Article 4(1)). States must also ensure that measures are set in place to sustain and

advance the various aspects of minority identities—culture, language, religion, traditions, and customs—unless they violate national law or contradict international standards (Article 4(2)). Although some cultural practices are understood to be harmful rather than beneficial, this exception to violating national laws could also be problematic, especially since some states either enforce laws denying the existence and rights of their minorities or neglect to pass legislative measures or policies that would be necessary to recognize and protect minority groups. Article 4(3) calls for provisions of minorities’ speaking and learning the “mother tongue,” which is related to the subsequent article that introduces the importance of education relevant to minorities and minority groups. The educational obligation of states is twofold—to “encourage knowledge” of the history, culture, traditions, language, and customs of minorities in general education curricula and to provide minorities with “adequate opportunities to gain knowledge of the society as a whole” (Article 4(4)). Lastly, Article 4(5) refers to minorities’ rights to participate fully in the “economic progress and development in their country,” and access to education is definitely one of the primary means in achieving economic progress and development of the state. However, more details about access to education for minority groups are not included in this Declaration, and the issue of quality of education is nearly negligent. Higher education, in particular (or any other level of formal education, for that matter), is not at all addressed in the Declaration on the Rights of Minorities, but compared to other international instruments relevant to minorities and groups (e.g., International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief), there are several

broad references to ensuring educational measures for minority groups that recognize their existence and freedom of expression and livelihood.

Vienna Declaration and Programme of Action

June 25, 1993 marked an auspicious occasion in the history of international human rights. More than 7,000 participants from all over the world had gathered in Vienna for the World Conference on Human Rights. According to current Secretary General of the United Nations, Ban Ki-moon, these thousands of conference participants “overcame major differences to produce a powerful outcome that emphasized that economic, social, cultural, civil and political rights are indivisible and interdependent, each contributing to the enjoyment of the other” (United Nations, 2013, p. 5). The “powerful outcome” of this conference was the adoption of the Vienna Declaration and Programme of Action, which reinforced the principles of international human rights as set in the UN Charter and the Universal Declaration of Human Rights. This gathering witnessed a heightened attention placed upon timely issues such as the necessity of promoting and ensuring the rights of women and securing justice by addressing impunity through an agreement on the permanent establishment of an international criminal court. Navi Pillay, the United Nations High Commissioner for Human Rights, stressed that there were concerns of fragmentation and dissension between states over the debate of whether civil and political rights were more crucial than cultural, economic, social rights during the conference proceedings; and disputes did occur, but Pillay likewise assured that the drafting and adoption of the “powerful, landmark” Vienna Declaration and Programme of Action marked:

the most significant human rights document produced in the last quarter of the twentieth century. It made clear that human rights are universal, indivisible,

interdependent and interrelated, and committed States to promote and protect all human rights for all people “regardless of their political, economic, and cultural systems” (United Nations, 2013, p. 9).

The interconnectedness and interdependence of human rights and their universal application are understood to be necessary for all peoples of the world. The participants who drafted the Vienna Declaration and Programme of Action, therefore, also make the rights of indigenous peoples and minorities, as well as the right to education quite “clear” in this document, particularly its association to recognition and preservation of their identities.

Part I of the document includes the 39 articles of the Vienna Declaration, and Part II consists of 100 articles split among the following six categories: A) “Increased coordination on human rights within the United Nations system”; B) “Equality, dignity and tolerance”; “Cooperation, development and strengthening of human rights”; D) “Human rights education”; E) “Implementation and monitoring methods”; and F) “Follow-up to the World Conference on Human Rights.” Categorized sub-sections can also be found within the six categories of the Programme of Action including: “Racism, racial discrimination, xenophobia and other forms of intolerance” (Articles 19 to 24) and “Persons belonging to national or ethnic, religious and linguistic minorities” (Articles 25 to 27), for example. A sub-section of the minorities section includes a segment focused on “Indigenous people” (Articles 28 to 32), which is unique for such a document, as it suggests that indigenous peoples are a sub-category of minorities, which is actually challenged and contradicted in most other international human rights instruments that clearly distinguish between the two groups by name and/or description. Article 25 of the Programme of Action, however, clarifies that the Working Group on Indigenous Populations was overseen by what was

formerly called the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This transition explains why articles relevant to indigenous peoples are listed under the larger minorities heading in the Vienna Declaration and Programme of Action. By 1999, however, the Sub-Commission was renamed and reclassified, resulting in a clear-cut distinction made between human rights decisions regarding indigenous peoples and minorities with the formation of the Working Group on Minorities in addition to an already-established Working Group on Indigenous Populations.⁵¹ In 2005, the mandate of the Independent Expert⁵² on minority issues was established, and shortly thereafter, in 2007, the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, comprised of five independent experts (was established).

Minorities and indigenous peoples are each addressed on 14 occasions within the articles of the Vienna Declaration and Programme of Action. Article 19 of the Vienna Declaration reinforces the notion of equal rights for all minorities, and that they may “exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.” Furthermore, minorities “have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without

⁵¹ In 1999, the Sub-Commission on Prevention of Discrimination and Protection of Minorities was replaced with the Sub-Commission on the Promotion and Protection of Human Rights, a United Nations “think tank,” which oversaw eight working groups—Working Group on Administration of Justice; Working Group on Communication; Working Group on Contemporary Forms of Slavery; Working Group on Indigenous Populations; Working Group on Minorities; Working Group on Social Forum; Working Group on Transnational Corporations; and Working Group on Terrorism. In 2006, the think tank and its working groups were abolished and replaced by a consultative committee of 26 experts to assist the then-newly established Human Rights Council (UN News Center, 2006).

⁵² “Independent Expert” is synonymous with the term “Special Rapporteur.”

interference or any form of discrimination.” Aligning with the Declaration on the Rights of Minorities, this article of the Vienna Declaration reiterates the recognition of the national, ethnic, religious, and linguistic identities of peoples belonging to minority groups. Article 25 of the Programme of Action resulted in the eventual establishment of a minority rights working group and the now-permanent Independent Expert on minority issues to be established; Article 26 calls for states and the “international community” to promote and protect the rights of minorities as laid out in the Declaration on the Rights of Minorities; and Article 27, which reads: “Measures to be taken, where appropriate, should include facilitation of their full participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development in their country.” Again, this theme of “appropriate” measures fittingly emerges where states should determine when it would be necessary to act in order to guarantee persons belonging to minorities “full participation in all aspects” of society that contribute to the development and progress and growth of the nation. This last article is nearly an exact duplicate of Article 4(5) of the Declaration of the Rights of Minorities, which can also infer that access to education applies to one or more of these “aspects” of the cultural, economic, religious, and/or social “life” of the society.

The references to education in the Vienna Declaration and Programme of Action are limited, as more than 80% of the 28 occurrences of education are specific to human rights education. The remaining five mentions of education include a reference to: children’s rights to access “basic education” (Article 47); the right for women to have equal access to “education at all levels” (Article 41); everyone having equal rights to education, among other social programs and services (from the sub-section of the Programme of Action entitled

“The rights of disabled persons” in Article 63); “national cooperation and international action” in the field of education (among other sectors) to prevent gender-based violence and sexual exploitation; and lastly, and probably the most relevant to the focus of this discourse:

States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems (Article 24).

Equal access to education thus is a recurring theme albeit scarce for an international document as substantial as the Vienna Declaration and Programme of Action, and as evident in references to “appropriate measures” and states’ responsibilities to “create and maintain adequate [education] measures” for disadvantaged and vulnerable groups including indigenous peoples and minorities, equitable access to education is also raised. Educational references for indigenous peoples, minorities are still not sufficiently addressed, despite having separate sections devoted to focusing on these two populations. Access to higher education is also missing from this particular document, and it is only slightly implied in the need for states to ensure equal access to “education at all levels” for women. Even in this instance, there is no indication of equal access to “all levels” of schooling for other disadvantaged/vulnerable groups. With regards to implications of the quality of such education, there are no direct references to the level of education in any part of the document; rather, the generalized statement that “the primary responsibility for standard-setting lies with states” (Article 38 of Vienna Declaration), but Article 29 of the Vienna Declaration makes it clear that states must ensure the “minimum standards for protection of

human rights, as laid down in international conventions.” States must set the standards for promoting and protecting human rights such as the right to education as long as those standards adhere to international mandates. This association between national and international standard-setting is not consistently addressed in other international instruments, leaving room for multiple interpretations of how human rights standards are developed at the national level and how they are enforced at the international level.

UNESCO Universal Declaration on Cultural Diversity

According to then-Director-General of UNESCO, Koïchiro Matsuura, the adoption of the UNESCO Universal Declaration on Cultural Diversity occurred under quite “unusual” circumstances, less than two months following the events that transpired on September 11, 2001 in New York City. The 31st session of the UNESCO General Conference was the first of “ministerial-level” meetings to be held after 9/11, and Matsuura emphasized that it provided “an opportunity for States to reaffirm their conviction that intercultural dialogue is the best guarantee of peace and to reject outright the theory of the inevitable clash of cultures and civilizations” (UNESCO, 2002). The purpose of the UNESCO Universal Declaration on Cultural Diversity is to recognize and promote the importance of cultural diversity, and the opening article of the Declaration underscores how significant it is: “cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.”

The recognition of vulnerable populations, who contribute to the world’s cultural and social diversity is also highlighted:

The defense of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Celebrating cultural diversity is attributed to existing and sustaining protection of the rights of indigenous peoples and minorities. Not only is this diversity an “ethical imperative,” but it is also “inseparable” from our common humanity. This notion of acknowledging the inherent dignity of humankind is found in almost every international instrument, especially those specific to indigenous peoples, minorities, children, women, persons with disabilities, and other disadvantaged or vulnerable peoples and groups. To single out both minorities and indigenous peoples, in particular, speaks to the worldwide injustices that these particular groups have faced in promoting and protecting their identities and equal recognition as human beings.

Even through education, the appreciation and protection of such diversity is possible as “all persons are entitled to quality education and training that fully respect their cultural identity (Article 5). There is this understanding that education has the capacity to preserve and protect the livelihoods of indigenous peoples and minorities. While there are no specific references to higher education, there are broad references to education and advanced learning are rather equivocal in meaning. In order to ensure human rights protections through cultural diversity, Article 6 calls for the need for equal access for all to: “art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination,” and Articles 7, 8, and

9 focus on cultural diversity and creativity, addressing the importance of preserving, improving, and sharing of cultural values across generations; the recognition of the meaning, identities, and values of diverse “cultural goods and services” of authors and artists of diverse backgrounds; and the need for cultural policies that promote the production and distribution of such culturally-diverse goods and services, respectively. Formal or non-formal educational institutions and schools are opportune venues for the learning, production, and sharing of knowledge through cultural material and non-material products. Learning and applying the fields of arts, sciences, and technology are also commonplace in most centers of higher learning, such as HEIs, where skills learned and developed within such knowledge areas may be shared with and applied to the greater society. The action plan for the implementation of the UNESCO Universal Declaration of Cultural Diversity (known as “Annex II”) includes the following supplementary directives of how specific education-related objectives should be carried out, which include: “Encouraging linguistic diversity—while respecting the mother tongue—at all levels of education, wherever possible, and fostering the learning of several languages from the earliest age”; “[p]romoting through education an awareness of the positive value of cultural diversity and improving to this end both curriculum design and teacher education”; “[i]ncorporating, where appropriate, traditional pedagogies into the education process with a view to preserving and making full use of culturally appropriate methods of communication and transmission of knowledge”; “[e]ncouraging ‘digital literacy’ and ensuring greater mastery of the new information and communication technologies, which should be seen both as educational disciplines and as pedagogical tools capable of enhancing the effectiveness of educational services”;

“[p]romoting linguistic diversity in cyberspace and encouraging universal access through the global network to all information in the public domain”; and lastly,

Countering the digital divide, in close cooperation in relevant United Nations system organizations, by fostering access by the developing countries to the new technologies, by helping them to master information technologies and by facilitating the digital dissemination of endogenous cultural products and access by those countries to the educational, cultural and scientific digital resources available worldwide (UNESCO, 2001).

Out of all these educational objectives, three emerging, interconnected themes surface—cultural and/or identity preservation and promotion; the ever-evolving advancement and improvement of the quality of educational resources and methods; and the coherence of traditional, cultural knowledge and norms and contemporary, technological innovations. Clearly, the practical implications within the action plan of the Universal Declaration on Cultural Diversity has more relevance to education systems than the actual text of the Declaration, but this by no means is to disregard that the inspiration for the action plan derives directly from the Declaration on Cultural Diversity itself.

While equal and equitable access to education are highlighted in both the Declaration and its annex, higher education is introduced for the first time (albeit indirectly) with the phrase “at all levels of education” but specifically in regards to the promotion of linguistic diversity and language-learning. Quality of education is also addressed in terms of overall improvement of educational resources and heightening the need for cultural diversity and knowledge-sharing. For instance, “improving . . . both curriculum design and teacher education” and “enhancing the effectiveness of educational services,” reflect a desire to raise

and advance the quality and relevance of education and knowledge dissemination, particularly through ensuring opportunities for the use of diverse forms of knowledge, educators, and tools as indicated in Articles 7, 8, and 9 of the UNESCO Universal Declaration on Cultural Diversity. The presence of cultural diversity within education and higher education, in particular, therefore, has the capacity and potential to develop and encourage such cultures in the communities in which they reside and beyond.

In the previous chapter, it became clear that the World Declaration on Higher Education and the Framework for Priority Action both call upon the need for diversity within higher education systems—not only within the social and cultural sense, but also as catalysts for promoting economic diversity, progress, and growth of societies through material and spiritual means. Thus, the cultural diversity iterated in the Universal Declaration on Cultural Diversity has implications for diversity in many other facets of society, especially if humankind is dependent upon it as introduced in Article 1:

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Themes of the inevitability and necessity of cosmopolitanism, pluralism, oneness of humankind, and unity in diversity resound throughout this statement. In particular, the notion of unity in diversity is far more pronounced, whereby the emphasis on unity is equally balanced with the import of diversity, suggesting that unity in diversity is possible and that it

is anything far from an oxymoron. Diversity, being “embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind” is depicted as an inevitable phenomenon. Not only is this diversity unavoidable, but it is also “as necessary for humankind as biodiversity is for nature.” The potency of such a statement reveals that human life and progress is dependent upon human diversity, because as according to the International Union for the Conservation of Nature (IUCN) (2010), “biodiversity is crucial to human wellbeing, sustainable development and poverty reduction.” Imagine what this means for cultural diversity and the contribution indigenous peoples and minorities have made, continue and should be permitted to make, especially if granted the right to access quality higher education.

Declaration on the Rights of Indigenous Peoples

Indigenous peoples are very rarely acknowledged and realized within international human rights instruments that were not intentionally drafted for the rights and/or protections of indigenous peoples and groups. In Thornberry’s (2012) words, “indigenous peoples were subject to . . . attempts to write them out of the script” (p. 1). It was as if their lived experiences were implicitly reflected in writing, particularly through its absence of indigenous existence, their “invisibility.”

Newer international instruments are gradually challenging this pronounced absence. Similar to the first article of the UNESCO Universal Declaration on Cultural Diversity, the preamble of the Declaration on the Rights of Indigenous Peoples also speaks to the importance of indigenous peoples and their contribution to the diversity of human civilization: “indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such . . .

peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.” This “common heritage of humankind,” adopted from the Universal Declaration on Cultural Diversity reference to the “common heritage of humanity” (UNESCO, 2001) also reveals the significant recognition and contribution of indigenous peoples to this heritage. Similar to the term *minorities*, the definition of “indigenous peoples” is also somewhat varied, as among discourses within the UN System, the classification of indigenous peoples may include all or part of the following description:

[I]ndigenous peoples are descendants of the peoples who inhabited the land or territory prior to colonization or the establishment of state borders; they possess distinct social, economic and political systems, languages, cultures and beliefs, and are determined to maintain and develop this distinct identity; they exhibit strong attachment to their ancestral lands and the natural resources contained therein; and/or they belong to the non-dominant groups of a society and identify themselves as indigenous peoples (Office of the High Commissioner, 2010, p. 3).

As in the Declaration on the Rights of Minorities, the right to self-identification or self-definition for indigenous peoples and minorities is a major shift from the state-defined paradigm. However, the potency and power behind this language is unclear, especially since states are required to ensure both non-discrimination and protection of these respective populations. There is consensus, however, that indigenous peoples share unique experiences of historical, cultural, social, and political accounts that distinguish them from minorities and other underrepresented populations and groups, and have “suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and

resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests” (United Nations, 2006).

In response to a recommendation made by the Human Rights Council on June 29, 2006, the Declaration on the Rights of Indigenous Peoples was adopted more than a year later at the General Assembly’s 107th plenary meeting in New York on September 13, 2007. The UN Declaration on the Rights on the Rights of Indigenous Peoples (UNDRIP) is the youngest of all international instruments adopted by the General Assembly specifically addressing the protection and rights of indigenous peoples from discrimination on the basis of ethnic, racial, linguistic, national, indigenous, gender-specific, and/or religious identities. Article 44 specifically states that the rights of the Declaration are “equally guaranteed to male and female indigenous individuals,” recognizing that indigenous women are vulnerable and often at a disadvantage to indigenous men regarding their rights and protections. UNDRIP is also the most comprehensive of indigenous-related international instruments regardless of its non-legal, non-binding status. This Declaration is unusual because as mentioned earlier, within discourses of international human rights, indigenous peoples have unique identities that distinguish them from other minority groups.

This distinct identity of indigenous peoples is emphasized and highlighted at the beginning of the annex of UNDRIP, where it is emphasized that although indigenous peoples are indeed “equal to all other peoples,” their right “to be different and [to] consider themselves different must be affirmed and “respected as such.” So clearly, a precedent is already set that although indigenous peoples are equal to all under international law, distinct identity factors attributed to indigenous populations (land rights, sovereignty, indigenous knowledge, etc.) are cause for heightening awareness about their unique circumstances and

specific protections. Addressing these issues within international discourse regarding the discriminatory practices committed against indigenous populations under the guise of social welfare policy, legislation, scientific methods, and so on is necessary in order for states to be aware that subversive policies and strategies in perpetuating the marginalization and oppression of indigenous peoples is intolerable and in violation of international human rights standards.

Consistent with the language of CADE and ILO 169, references to indigenous peoples' unique identity in UNDRIP also calls for indigenous peoples to be involved in the planning and implementation of their own rights and protections. For example, "States shall take effective measures, *in consultation and cooperation with the indigenous peoples concerned*, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society" (emphasis added) (Article 15(2)). Words such as "in conjunction with," "in cooperation with," and "in consultation with" indigenous peoples occurs a total of 21 times, emphasizing that self-determination of indigenous peoples' is at the forefront of ensuring their rights. This also holds true for indigenous rights to education:

States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment (Article 17(2)).

Article 17(2) highlights the role and necessity of states to include indigenous peoples in their decision-making processes and implementation of strategies to “protect” indigenous peoples from exploitation and the like, particularly due to their “special vulnerability.” The focus of the measures is intended to be preemptive here: “protect indigenous children from any work that is likely to be hazardous or interfere with the child’s education, or to be harmful . . .” to their overall development. The protection of indigenous children’s health (i.e., his or her “physical, mental, spiritual, moral or social development”), is not spelled out in other instruments as it is here in UNDRIP. Within international law, indigenous peoples hold a unique status of vulnerability among other vulnerable groups and peoples that is incomparable. Education is indeed a tool for empowerment, but this relationship between the two is only mentioned explicitly in this Declaration. Nonetheless, the empowering capacity and potential of higher education is also mentioned in instruments such as CADE, DRRP, UNDRIP, and the World Declaration on Higher Education, for instance.

Using the term “special vulnerability” implies indigenous peoples—indigenous children, in particular—share a distinct, unique experience from other vulnerable persons or groups. It is as if this “special vulnerability” is a part of their oppressed identity. For instance, this acknowledgement exemplifies Tuck’s (2009) sentiment that the projection of victimization upon Native peoples is disempowering, and therefore, implies that “special vulnerability” is associated with collective indigenous identities. On the other hand, the pairing of the words also reveals the drafters’ recognition of the gravity of the unique status of indigenous peoples from all other disadvantaged and vulnerable persons and groups. On the contrary, this label may also be interpreted to reflect an awareness and sensitivity to the unjust, inhumane experiences indigenous peoples have endured for centuries. Regardless of

how the term might be interpreted, however, this “special vulnerability” is meant to be a collective, descriptive characteristic attributed to indigenous identity, calling out their unique historical susceptibility to human rights violations and injustice.

Echoing the themes of empowerment and self-determination, UNDRIP highlights their connection to indigenous peoples’ autonomy regarding education. Similar to the Convention Against Discrimination in Education regarding the education of national minorities, Article 14(1) invokes states to grant indigenous peoples the opportunity to establish their own educational systems and institutions (i.e., tribal colleges, language schools, etc.), but there is no direct reference to higher education in particular. Likewise, the importance of educational instruction and learning to be held in languages or mother tongue of Native communities is also introduced:

States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.” (Article 14(3)).

Article 14(3) calls for states to take “effective [education-related] measures” in collaboration and consultation with indigenous peoples and their communities. Access to education for indigenous peoples is intended to be remedied by measures that remain to be defined.

However, access to education that is based on indigenous culture and available in indigenous languages is conditional. The coupling of words “when possible” suggests that such access will not always be guaranteed, especially since “when possible” is determined by the state. Nonetheless, the fact that “in conjunction with indigenous peoples” is at the beginning of this article highlights its significance. Although the emphases on *indigenous children’s* education

omit the topic of higher education, they do not preclude it. Article 14 (or specifically 14(1) through 14(3)) focus on education, which is also relevant to higher education. Having the right to establish and control their own educational institutions and systems (14(1)), the right to all levels of public education without discrimination (14(2)), and the right to education that adheres to their own culture and language (14(3)) are all applicable to higher education as well. Higher education may not be mentioned directly, but as indicated in Article 14(2), indigenous peoples have the right to “all levels and forms of education” provided by the state.

Despite allusions to higher education being muted, references to indigenous knowledge in UNDRIP are elucidated and pronounced. The value of indigenous knowledge is also addressed in the World Declaration on Higher Education. Article 1 of the World Declaration on Higher Education emphasizes that higher education should be transformed and utilized to “contribute to the sustainable development and improvement of society as a whole,” and one method of accomplishing this is to “help understand, interpret, preserve, enhance, promote and disseminate national and regional, international and historic cultures, in a context of cultural pluralism and diversity” (Article 1(d)). Article 5 addresses the importance of enhancing the sciences, including the natural sciences, and Article 9(c) highlights the importance of “combining traditional or local knowledge and know-how with advanced science and technology.” UNDRIP introduces the significance of indigenous knowledge in the beginning, underlining that recognition of “respect for indigenous knowledge, cultures and traditional practices contribute to sustainable and equitable development and proper management of the environment” (Preamble). Article 31 expands on the right to maintain and apply indigenous knowledge and how it is defined:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions (Article 31(1)).

In other words, international law requires that states permit indigenous peoples to have full, protected autonomy over their own knowledge and scientific methods. Emphasis on preserving and protecting “cultural” and “traditional” knowledge and practices must also be guaranteed through intellectual property⁵³ rights. Michael Dodson, Special Rapporteur on the rights of indigenous peoples, in his 2007 report titled “Report on Indigenous Traditional Knowledge” was presented at the sixth session of the UN Permanent Forum on Indigenous Issues. In the report, Dodson (2007) specifies that Article 31 of UNDRIP is the “most explicit provision for the protection of indigenous knowledge” (p. 10), but although there are international, regional, and national attempts and measures in protecting the rights to traditional knowledge, far more needs to be done. According to Dodson (2007), there are several UN agencies and intergovernmental organizations that are currently engaged in activities aimed at addressing this inadequate protection, including: the World Intellectual Property Organization (WIPO), the United Nations Development Programme (UNDP), the

⁵³ According to WIPO (2014), intellectual property (IP) “refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

United Nations Conference on Trade and Development (UNCTAD), the Food and Agriculture Organization (FAO) of the United Nations, the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), the Working Group on Indigenous Populations (WGIP), and UNESCO.

The intermingling of knowledge and cultural beliefs is unique to indigenous ways of knowing, and most importantly, indigenous knowledge is dependent upon the relationship between the two. Furthermore, as discussed in chapter 2, indigenous knowledge is specifically based on understanding the interdependency between nature and culture (UNESCO, 2003). Decolonial scholar and author of *Red Skins, White Masks: Rejecting the Colonial Politics of Recognition* Glen Coulthard stresses that states often perpetuate colonial and capitalist processes by undermining indigenous peoples's relationship with land (Walia, 2015). Coulthard further explains that the relationship with land is not to be mistaken as "exclusionary"; rather, "Land is a relationship based on the obligations we have to other people and the other-than-human relations that constitute the land itself" (Walia, 2015). This sentiment conveys that subjugation of indigenous peoples' lands implies a misunderstanding about the relationship between the two. Thus, severing this relationship not only threatens indigenous ways of knowing and existence, but it also imperils cultural diversity, biodiversity, pluralism, sustainable and equitable development, security of the natural environment, and human life. Article 31(2) requires states, therefore, to again take "effective measures" ("in conjunction with indigenous peoples") to ensure and protect the right to practice and sustain these various manifestations of indigenous knowledge.

Like other instruments reviewed thus far, the theme of measures is echoed in various other sections of the Declaration. In addition to "effective measures," there are "where

appropriate, special measures” (Article 21(2)) and “appropriate measures,” which includes “legislative measures” (Article 38). UNDRIP (and other international instruments analyzed here) contain references to measures, and some of them are in regards to education, while others are much broader in reference to general rights of indigenous peoples, minorities, and women. If indigenous peoples self-define themselves, how is the state’s determination of “appropriate” or “effective” legislative or non-legislative measures relevant to self-identified indigenous peoples? This is a question that is left unanswered in UNDRIP, as there needs to be an indication of consistency between states’ measures for self-identified indigenous peoples—not how the state defines and identifies or fails to define and recognize indigenous peoples. Incidentally, however, the UN Expert Mechanism on the Rights of Indigenous Peoples is currently “seeking the views of indigenous peoples on measures and implementation strategies to attain the goals of the Declaration on the Rights of Indigenous Peoples” through the distribution of questionnaires (UN, 2014).

In addition to the requirement of measures to be adopted in ensuring equitable opportunities for indigenous peoples’ education, the quality of their education is also imperative to the discourse, especially since it has historically been lopsided, and for indigenous peoples in some parts of the world, it has been colonized and thus, colonizing. Unfortunately, however, there is little to no reference on quality regarding education and higher education in UNDRIP. Rather, quality is treated as a broad sweeping concept specific to all the rights covered in the Declaration. For instance, Article 24(2) mentions quality of life for indigenous peoples as “enjoyment of the highest attainable standard of physical and mental health.” The “highest attainable standard” is quite ambiguous, and it does not offer any specific guidance on how states can ensure (let alone measure and uphold such a

standard). Article 34 is the only article in this Declaration that could be specific to education if interpreted accordingly:

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

This article is one of the only articles found—albeit loosely—relevant to education and higher education that emphasizes upholding international human rights standards—as opposed to national or states parties’ standards. In Article 34, implicit references to indigenous educational institutions, cultural traditions, and customs are also linked to indigenous knowledge. Even though standards in this particular article do not reflect quality, they do suggest that international human rights standards are a measure that is superior to national-level methods. Similarly, in Article 43, a statement regarding the protection of generalized rights and protections presented in UNDRIP should be considered as the smallest measure or level of required enforcement: “The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” The high regard for international human rights law is evident in the last two articles of the Declaration. Article 45 reads: “Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future,” and Articles 46(1-3) specifically call for states not to misinterpret or violate anything mentioned in UNDRIP, setting a precedent that international human rights law and its standards and measures regarding the treatment of indigenous peoples is above national laws and policies. This kind of language is the first and only of its kind in any international

instrument, and it is especially groundbreaking that such resilient support for international law is presented in a non-binding declaration such as UNDRIP. However, UNDRIP is also the most recent international instrument of its kind that is dedicated to the rights of indigenous peoples. Perhaps this change is another indication that international human rights discourses are ever-evolving and advancing.

International Definitions and Implications of “Equal” and “Equitable” Access to “Quality” Higher Education for Indigenous Peoples and Minorities

The international human rights instruments reviewed in this chapter were selected due to one or more of the following reasons: 1) relevance to the rights of indigenous peoples; 2) relevance to the rights of minorities; and 3) relevance to access or the right to higher education. Learning how equality, equity, and quality are defined in these instruments advanced the researcher’s understanding of the relationship they had to each other, particularly within the context of access to higher education for indigenous peoples and minorities.

Equality, in international human rights law, is perceived as an inherent attribute of human beings, but it does not necessarily mean that everyone will be treated equally, and this is acknowledged in international instruments, including those that contain articles that specifically mention access to general education and higher education. The meanings of equality or equal access to higher education are better understood once the various contextual dimensions of equality and equal rights within international human rights discourses are analyzed. Most of the language and content of international instruments evolves as new instruments are drafted and adopted, particularly in matters of addressing equality and inclusion. For instance, there is an evident modification in how equality was

addressed in international human rights discourses. There was a shift, moving away from the usage of singular words such as “all” and “everyone” when speaking of equal rights in UDHR, CADE, ICERD, ICCPR, and ICESCR, for example, to terms such as “inherent dignity,” “respect for human dignity,” “human unity and diversity,” “making the international community a universal and diversified whole,” “essential unity of the human race,” “fundamental equality of all human beings and all peoples,” and “their plurality” in CRPD, DRRP, UNESCO Universal Declaration on Cultural Diversity, and UNDRIP, emphasizing the equality of human beings. There is a clear difference in how the equality of peoples is described as time progresses and new instruments are drafted and adopted. Two instruments (UNESCO Universal Declaration on Cultural Diversity and UNDRIP) specifically refer to the “common heritage of humanity,” and “common heritage of humankind,” suggesting that the core identity of human beings is their humanity. Since the equality of humankind is consistent yet evolving across international instruments, their equal rights are likewise emphasized. Although peoples from around the world are equal in their inherent dignity and humanity, it does not mean they are the “same.” Additionally, when it comes to equal rights, it does not suggest uniform or identical treatment, and identifying and analyzing references to equal access to higher education within international instruments revealed that the delegates who participated in the drafting of these documents were aware that the equality of rights are not yet a universally-grasped achievement.

Equal access to education and to higher education in particular was not always addressed (higher education was rarely if ever discussed in every instrument since the general reference to “education” seemed sufficient most of the time). As discussed earlier, equal access to education was often general, implying equal access to higher education, particularly

when language such as “education at all levels” was used. Where it becomes problematic, however, is when equal access to higher education *is* explicit, such as in UDHR and CADE, whereby higher education is understood to be accessible to all “on the basis of” merit (as initially introduced in UDHR) or capacity (mentioned in CADE, ICESCR, and CRC)—two indicators that are not innately equal across peoples and groups. Such references to equal access to higher education, therefore, suggest that education at all levels below or preceding higher education are equal in measure—that everyone receives an “equal” education prior to reaching higher education. This assumption is highly problematic because of its inaccuracy in reflecting the unequal and inequitable conditions and obstacles faced by many underrepresented peoples and groups at the earliest levels of schooling.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the CRC are the only international instruments that specify equal access to higher education—on the basis of capacity—must be guaranteed “by all” or “by every” “appropriate means,” respectively. The “appropriate means” referred to in these two instruments highlights the necessity to balance and compensate for the limitations and disparities that granting “equal” access solely on the basis of merit or capacity would yield; they can be likened to the discussion of various forms of “measures” that were presented in nearly every instrument reviewed in this chapter.

The words “equity” or “equitable” rarely (if at all) surface in the binding and non-binding international instruments that are specific to the rights of indigenous peoples, minorities, and/or the right to education and higher education. The frequent absence of inferences to equity within international instruments most likely has to do with the fact that there is so much emphasis on equality of all persons and groups that consideration for equity

may be considered to be moot. Furthermore, the concept of equity or equitable measures evolved over time as the drafters of international instruments targeting underrepresented groups were more informed and aware of its necessary inclusion. For instance, guidance to uphold equity and equitable conditions, including those relating to access to higher education, are presented in the guise of “measures” of some kind—“necessary,” “practical,” “effective,” “concrete,” “positive,” “special,” “legislative,” “judicial,” “administrative,” or “other.” Measures may be defined as:

the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programs and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavored groups, devised and implemented on the basis of such instruments (CERD, 2009, p. 5).

During its seventy-fifth session, the Committee on the Elimination of Racial Discrimination (CERD) submitted a draft of a new recommendation on special measures titled “General Recommendations No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination” (CERD, 2009). Article 1(4) (“special measures”) and Article 2(2) (“special and concrete measures”) of ICERD included the language in question which led to the drafting of the recommendation. In the recommendation, it is specified that the meaning of both “special measures” and “special and concrete measures” are synonymous; but the purpose of the draft was not solely limited to the interpretation of these two articles, but to provide a greater context of the Convention as a whole. The underlying motivation of the recommendation, therefore, was to “provide . . . practical guidance on the meaning of special measures under the Convention in order to

assist States parties in the discharge of their obligations under the Convention, including reporting obligations” (CERD, 2009, p. 2). According to CERD (2009), the objective of special measures is to “[advance] effective equality” (p. 4), and they are “functionally equivalent and have an autonomous meaning,” (p. 4). Special measures are to not be mistaken for rights dictated in international instruments “specific to categories of person or community” (p. 5), including:

the rights of persons belonging to minorities to enjoy their own culture, profess and practice their own religion and use their own language, the rights of indigenous peoples, including rights to lands traditionally occupied by them, and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological differences from men. Such rights are permanent rights, recognized as such in human rights instruments, including those adopted in the context of the United Nations and its specialized agencies. States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice. The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures.

Hence, the rights recorded in these instruments (and the examples provided above) that aim to protect specific vulnerable and disadvantaged populations and groups are permanent, while special measures are temporary. For this reason, special measures “should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality,” and must also be “designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of

the individuals and communities concerned (CERD, 2009, p. 5). Although it is not covered in Recommendation No. 32, Article 7 of ICERD, as discussed earlier, calls for states parties to the Convention to

adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups

In this particular example, the education-related measures referenced here are not special measures, but permanent measures. It is also important to point out that these measures—be they special measures or some form of permanent measures, must be adopted in cooperation and consultation with the persons and groups directly benefiting from them per the requirements of international human rights law such as those instruments specific to the protection and rights of indigenous peoples and minorities (e.g., UNDRIP, ILO No. 169, Declaration on the Rights of Minorities). CEDAW is heavily populated with the requirement of various permanent and temporary forms of measures, which are mentioned a total of 26 times in the Convention; references to such measures, however, are only made and not explained (e.g., there are no specifications regarding the need for consultation with women and men within governments who are planning and implementing these measures).

Equitable access, therefore, is dependent upon equitable measures. CADE and CEDAW are the only two international instruments that call for states to adopt measures in education. ICESCR highlights “all necessary measures” (Article 5(1)), and CEDAW requires “all appropriate measures” in education. It is interesting, however, that no non-binding instruments (i.e., declarations and recommendations) explicitly focus on equitable access in

higher education, especially since they are found to be more thorough in detail and content compared to their binding counterparts. Not surprisingly, however, the World Declaration on Higher Education and Framework for Priority Action are the only non-binding instruments that specify measures in higher education. Equitable access to higher education would be a paradox if the high-quality of education at all levels was not taken into account.

In international human rights law, quality is most often synonymous with standards. Only on a few occasions are quality and standards used together, which implies that some of the drafters of the instruments viewed them as separate and distinct, yet related. Quality is defined as “general excellence of standard or level,” and standards are “required or agreed level[s] of quality or attainment” (OED, 2014). In spite of the overlaps and distinctions between the two words, “standards” is used more frequently than “quality,” which also suggests the delegates who participated in the drafting processes more or less agreed with the generalizability of “standards” versus “quality.”

Within education and higher education, in particular, the question of quality is very important. Equal and/or equitable access to higher education would not be effective for indigenous peoples, minorities, and other disadvantaged groups if quality of said education was not of equal and high caliber. In chapter 5, it was revealed that the World Declaration on Higher Education and Framework For Priority Action position quality in higher education as a “multidimensional concept” (Article 11(a)). Therefore, quality higher education refers to all components of higher education systems and structures—curricula, administrators, faculty, staff, facilities, research, award systems, policies, materials, organization, equipment, and so on. Within international human rights discourse, high quality education or higher education for minorities and indigenous peoples is dependent

upon three factors—relevance (as mentioned in the World Declaration on Higher Education) or appropriateness to the populations being targeted, improvement of current conditions and resources (also similar to “enhancement and preservation of quality,” as presented in the World Declaration on Higher Education Preamble), access to resources, and “standards” as determined by the state and in accordance with international human rights law. Quality of education and higher education were never defined in any of the instruments, but the lack of definitions is nothing new to international human rights discourses. Nonetheless, quality of higher education is implicitly addressed, and explicit mention of quality education (presumed at all levels, unless otherwise noted) are both still accounted for through a combination of various words and phrases. Regarding quality and its relationship to relevance or appropriateness, general education of indigenous peoples and minorities must respect and accurately capture the cultural traditions, customs, values, and experiences (past, present, and future) of their individual and collective identities (UNDRIP, Declaration on the Rights of Minorities). Likewise, educational institutions of all levels can be developed and run by minorities and indigenous peoples for their own respective communities, and the state must ensure that their quality is equivalent to national standards. Relevant and appropriate education also refers to education that is inclusive and of good quality, as mentioned in CRPD, but it falls short of maintaining a discourse of inclusion and quality in higher education, because it exclusively refers to primary and secondary education in this regard (Article 24(b)).

The UNESCO Universal Declaration on Cultural Diversity identifies another purpose of education as a relationship between relevance and improving education with regards to quality: “Promoting . . . an awareness of the positive value of cultural diversity and

improving to this end both curriculum design and teacher education” (Article 7); it also emphasizes that “all persons are entitled to quality education and training that fully respect their cultural identity” (Article 5); and lastly, it states that “enhancing the effectiveness of educational services” is imperative (Article 9). So quality education also preserves and maintains cultural diversity and identity, but it also advances other dimensions of quality—curricula, teacher training, and delivery, for instance; and access to such education further enhances its quality. Similarly, CEDAW contains language requiring education at all levels to be equivalent in resources and standards and have “equipment of the same quality” (Article 10(b)). This theme of access to equal quality education also resonates within and between instruments. Lastly, the quality of education is understood in a much broader sense, aligning with the standards of the state, as long as they coincide with international human rights standards. In CADE, states must ensure “equivalent standards and quality of education” (Article 4(b)), and it is specified that “the standard of education is not lower than the general standard laid down or approved by the competent authorities” (Article 5(1)(c)(ii)). ICESCR also calls for “minimum educational standards as may be laid down or approved by the State” (Article 13(3)), and Article 29(2) is a near duplicate of Article 13(4) of the ICESCR: “education given in such institutions shall conform to such minimum standards as may be laid down by the State.” Similarly, ILO No. 169 also requires that indigenous-established educational facilities and institutions “meet minimum standards established by the competent authority in consultation with [indigenous] peoples” and that “[a]ppropriate resources shall be provided for this purpose” (Article 27(3)). The Declaration on the Rights of Minorities, Vienna Declaration and Programme of Action (Article 29), and UNDRIP all acknowledge that standard-setting is up to states parties, but the standards they set must be

aligned with international human rights standards. Thinking of standards or quality of education, the word “minimum” is usually the opposite of what may be expected in regards to access to education for disadvantaged groups. “Minimum standards” imply that there is plenty of room for states to exploit and further marginalize disadvantaged groups such as indigenous peoples and minorities by abiding by the lowest measure of quality. However, it is important to note that some of the newer instruments—all non-binding—emphasized the importance of paralleling state standards to international human rights law. Therefore, the term “minimum” may not truly represent what lies beyond its surface of meaning. For instance, Article 43 of UNDRIP states that the “minimum standards” referred to in the Declaration “constitute . . . for the survival, dignity and well-being of the indigenous peoples of the world.” If the *minimum* standards are to ensure the subsistence, humanity, and security of indigenous peoples, then one must truly ask what would “maximum standards” ensure? The choice of words also suggests that delegates agreed for the most part that international human rights standards are superior in standards to those at the state-level. All in all, quality education and quality within the context of international human rights is multidimensional, even though its meaning or description is absent from the instruments studied in this chapter.

The “mystery” behind the meaning of quality education, similar to the contexts of equal or equitable access, had much to do with the omission of references to higher education from most of the binding and non-binding instruments analyzed. Out of the eight treaties studied, five made direct references to higher education (CADE, ICESCR, CEDAW, CRC, and CRPD); two made implied references (e.g., “education” or “education at all levels”) (ICERD and ILO No. 169); and one had no reference to higher education

whatsoever (ICCPR). Of the seven total non-binding instruments, only one declaration mentions higher education (UDHR); five contain implicit references to higher education (DDRP, Declaration on the Rights of Minorities, Vienna Declaration and Programme of Action, UNESCO Universal Declaration on Cultural Diversity, and UNDRIP); and the remaining one only references the education of children (Declaration on Religion or Belief).

Summary

Due to the understandably broad architecture of international instruments (and most laws in general), the meaning(s) underlying their content and structure are likewise expressed in general terms. Therefore, the categories, metaphors, and themes that emerged from the instruments were limited in scope and depth as well. Nonetheless, it was clear that consistent patterns and themes were manifested within and across the 15 documents analyzed here.

The analysis of the eight legally-binding treaties and seven non-binding declarations reveals that there are several overarching differences and similarities that are shared between the two kinds of international instruments. One of the main attributes shared by all the instruments is their references to other binding and non-binding instruments. The overlapping and cross-referencing of instruments not only indicates a relationship between and across some of these international instruments, but it also reveals an advancement in understanding and awareness regarding the longstanding conditions faced by indigenous peoples and minorities that have been disregarded and marginalized for long periods of time. The more recent the instrument, the more organized and relevant it was to the issues in question. Perhaps even the revisions/amendments to older versions, or even instruments that were created after those that preceded them had more room for transformation, learning, expansion, attention to detail, heightened awareness, knowledge-sharing, and so on.

Additionally, the cross-referencing of the instruments also reveals their shortcomings and limitations, allowing for those instruments referenced within an instrument to fill in the gaps, negotiate potential contradictions, and address shortcomings of its own content—a “shortcut” of sorts. There are still differences between the two kinds of instruments, however. For the most part, there is uniformity in language and content, which manifests evidence of consistency, but there are some changes or shifts across instruments (even though they cross-reference one another), particularly regarding the limited references to higher education. For instance, ICESCR calls for a “progressive introduction of free [higher] education” (Article 13(2)(c))—the only instrument to do so since primary and secondary education are the main contenders for free (and compulsory) education within international human rights discourses and global campaigns (e.g., EFA, MDG). Switching from access to higher education for all on the “basis of merit” in UDHR to the “basis of capacity” in several others to capacity “by every appropriate means” in CRC all occur in chronological order. These so-called “shifts of emphasis” are slightly disconcerting, as they are consequently “accompanied by the expression of less than full commitment to one or other of the principles originally proclaimed in Article 26 of the Universal Declaration, and in other cases by the affirmation of new principles not specifically mentioned in the Declaration” (UNESCO, 2000, p. 23). While UDHR appears to be the cornerstone instrument for all other instruments—binding and non-binding—these modifications, over time, nevertheless, also suggest that some of the language of UDHR (and some other earlier instruments, for that matter) are outdated and irrelevant to contemporary international human rights discourses and realities.

Soft law or non-binding instruments are much more thorough and detailed regarding the issues of minorities and indigenous peoples' equal and equitable access to *quality* higher education (let alone, education) than hard law or binding instruments. While non-binding instruments such as declarations and recommendations are highly valued and considered important in international human rights law discourses, they do not hold the same legal "potency" attributed to treaties such as conventions and covenants (even though treaties are not necessarily legally enforceable either). All that remains open-ended and ambiguous is left to the state to interpret and implement accordingly as it should see fit, but again, as long as it also aligns with international human rights standards. Although it may appear contradictory on the surface, the combined state-set and international human rights standards provides an invisible equilibrium, allowing for states to hold themselves accountable to international law, and for international law to be applicable and relevant to unique state conditions and populations as in the case of access to quality higher education for minorities and indigenous peoples.

It is evident that parties of international human rights discourses pay more attention to primary and secondary education or simply "education" than it does to higher education. The evident ambiguity of international instruments (especially legally-binding treaties) and the dearth of explicit references to higher education were not a surprise to the researcher. Nevertheless, knowing that participation among minorities and indigenous peoples in higher education is so disproportionately low around the world, it is unfortunate that the instruments do not pay more attention to specifically addressing higher education, rather than vague references such as "education at all levels." Interestingly, the links between education and autonomy over knowledge and economic development of minorities and

indigenous peoples is addressed in the Declaration on the Rights of Minorities and UNDRIP, respectively. Speaking of economic development, as discussed in chapter 1 and chapter 2, the World Declaration on Higher Education and Framework for Priority Action likewise emphasize the relationship between higher education and disadvantaged groups, including indigenous peoples and minorities, is mutually beneficial. Their “experience and talent [can] be of great value for the development of societies and nations” (Article 3(d)). This theme of integrating minority and indigenous knowledge systems and cultural values not only reinforces identity preservation, but it also contributes to the advantages of cultural diversity and the advancement of human civilization, as dictated in the UNESCO Universal Declaration on Cultural Diversity.

Although language and content regarding the sensitivity to the unequal and unjust conditions faced by indigenous peoples and minorities has heightened, switching from the universal “he” to “their,” and the cross-referencing of binding and non-binding instruments continues, the importance and value of higher education is still under-recognized within the context of formal international instruments. Furthermore, the recognition, status, and rights of indigenous peoples and minorities, including their right to higher education, are still as “invisible” as they were during the time of the drafting and submission of the Universal Declaration of Human Rights. For the most part, indigenous and minority identities are thrown into a generic, categorical list of “race, color, ethnic, nationality, gender,” and so on. The unique statuses of minorities and indigenous peoples should not be somewhat explicated and limited to two non-binding instruments that respectively concentrate on minorities and indigenous peoples alone. The “cultural diversity” that is vividly valued in most of these instruments should likewise be exemplified in writing. Although most of the

instruments implicitly include minorities and indigenous peoples, they include *all* peoples, without acknowledging the unique and distinct status of vulnerable populations that may require additional attention and detail such as self-determination, self-preservation, and self-identification, cultural traditions, and knowledge. These unique qualities of minorities and indigenous peoples, including the ongoing, mutually-reinforcing relationship of indigenous peoples with their lands do not permeate other instruments that are not specific to minorities or indigenous peoples. These specific instruments (ILO No. 169, Declaration on the Rights of Minorities, and UNDRIP), however, highlight the status of indigenous peoples is recognized to be unique and separate from minorities and other vulnerable groups (i.e., women, disabled, migrants, etc.), especially since every decision the state makes in their regard must first be consulted upon with indigenous peoples and/or must involve their cooperation, but this distinction is only recognized in ILO No. 169 and UNDRIP. In most instruments, indigenous peoples are not recognized as frequently as minorities are, but when they *are* recognized, indigenous peoples are simply listed alongside minorities, disregarding the distinct, multidimensional identities of indigenous peoples and minorities. For instance, prohibition of discrimination—a common theme that emerged within the instruments—may be challenging to discern if there is disagreement or contention between indigenous peoples and minorities that are self-identified as such and how the state defines peoples and groups of indigenous and/or minority heritage, and therefore, self-classification and preservation of identity may be conflicted. The preambles to most of the international instruments—not the articles themselves—provide the most context regarding the historical and interrelated, current circumstances of indigenous and minority identities. The preamble to CEDAW, for example, mentions that the: “eradication of apartheid, all forms of racism, racial

discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,” and the annex of UNDRIP calls the “contribution of the demilitarization of the lands and territories of indigenous peoples to peace.” In some instances, there is not much context, but emphasis on the unity of all peoples and their relations are highly emphasized, reinforcing this multifaceted understanding of unity in diversity reflecting the oneness or equality of humankind in spite of the array of identities recognized and sometimes accounted for. Despite the ambiguity that regularly flows throughout these instruments, local adoption and expansion of principles contained within them presents another dimension of how state standards regarding equal and equitable access to quality higher education compare to the international standards discussed here. More on states’ policies and legislation is discussed in the following chapter.

Chapter 7: The State and its Minorities and Indigenous Peoples: How Brazil, Iran, and New Zealand Address Access to Quality Higher Education

Introduction

The legitimacy of international human rights law cannot be taken seriously without considering how states are adopting, interpreting, and implementing such human rights mandates into their own legislation and policies. What is the discourse at the national level regarding indigenous peoples and minorities equal and equitable access to higher education of quality-level? How are international standards understood and interpreted (if at all) at the national level? How are equality, equity, and quality defined in these countries, especially in relation to access to higher education? Are indigenous peoples, minorities, and/or disadvantaged groups and their rights acknowledged at the national level? This chapter includes answers to such questions and explores how those relevant international instruments presented in chapter 5 and chapter 6 compare to relevant national discourses in Brazil, Islamic Republic of Iran, and New Zealand specific to issues of access to higher education and references to indigenous peoples and minority groups in particular. Special attention is given in exploring how definitions and implications of disadvantaged groups; equal and equitable access; higher education; quality in education; and the general promotion of the right to equal and equitable access to quality higher education for minorities and indigenous peoples are understood within both national and international contexts.

Documents and Translations Analyzed

In addition to the international instruments already under analysis, there are four distinct types of discourse from national mandates set in Brazil, Islamic Republic of Iran, and New Zealand. This section highlights the types of various laws and policies regarding higher education and higher education for minorities and/or indigenous populations in each of these respective countries. The higher education laws discussed here are those obligatory measures upheld by the state

government that must be carried out and obeyed nationally, whereas policies serve more as federal frameworks and outlines in support of the respective laws. Table 7.1 includes a list of all the relevant national-level discourses (comprised of legislative and policy measures) according to type. There are five categories or types of texts that are analyzed from one or more of the countries' constitutions, non-constitution-related legislation, judiciary decisions, ministry-level decisions, and inter-governmental policy communications (i.e., ministerial letters, memorandums).

Type of Legislation/ Policy	Brazil	Islamic Republic of Iran	New Zealand
<i>Constitution</i>	Constitution of the Federal Republic of Brazil (1988)	Constitution of the Islamic Republic of Iran (1979)	Constitution ⁵⁴ : <ul style="list-style-type: none"> • New Zealand Bill of Rights Act 1990; and • Treaty of Waitangi (1840)
<i>Legislative-Level</i>	Law of Guidelines and Basis of National Education (LDB); Lei de Cotas ("The Quota Law")	Civil Code of the Islamic Republic of Iran	Education Act 1989; Human Rights Act 1993;
<i>Ministry-Level</i>	National Education Plan (PNE)	Islamic Republic of Iran Ministry of Science, Research and Technology's letter to universities calling for the expulsion of Bahá'í students	Tertiary Education Strategy 2014-2019; Ka Hikitia – Accelerating for Success 2013-2017
<i>Inter-agency</i>	—	Islamic Republic of Iran's Supreme Revolutionary Cultural Council's confidential memorandum	—

Table 7.1: National-Level Discourses Relevant to Indigenous Peoples and Minority Groups' Access to Higher Education

⁵⁴ According to the New Zealand Constitution Act 1986, the Constitution of New Zealand is comprised of the following separate legislative measures: Constitution Act 1986; New Zealand Bill of Rights Act 1990; Electoral Act 1993; Treaty of Waitangi; and Standing Orders of the House of Representatives. Only the relevant texts were analyzed for this study and are included in the table above.

Table 7.2: State Parties' Status of Treaties Relevant to Indigenous Peoples, Minorities, or Higher Education

State Party Status ⁵⁵	International Instrument	Amendments/Declarations/Reservations
Brazil (R) Iran (A) New Zealand (R)	Convention Against Discrimination in Education (CADE)	New Zealand (D)
Brazil (S) Iran (S) New Zealand (S)	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Brazil (D) New Zealand (D)
Brazil (A) Iran (R) New Zealand (R)	International Covenant on Civil and Political Rights (ICCPR)	New Zealand (D) (R)
Brazil (A) Iran (R) New Zealand (R)	International Covenant on Economic, Social and Cultural Rights (ICESCR)	New Zealand (R)
Brazil (R) New Zealand (R)	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Brazil (D) New Zealand (D) (R)
Brazil (R)	Convention Concerning Indigenous and Tribal Peoples (ILO 169)	—
Brazil (R) Iran (R) New Zealand (R)	Convention on the Rights of the Child (CRC)	New Zealand (R)
Brazil (R) Iran (A) New Zealand (R)	Convention on the Rights of Persons with Disabilities (CRPD)	New Zealand (D)
Brazil (A) Iran (A) New Zealand (R)	World Heritage Convention (WHC)	—
—	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMWMF)	
Brazil (R) Iran (R)	Convention for the Safeguarding of the Intangible Cultural Heritage	
Brazil (R) New Zealand (Ac)	Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CPPDCE)	New Zealand (D)

⁵⁵ Acceptance (A): The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state. Accession (Ac): “Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. Ratification (R): Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. Signature (S): Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be

Table 7.2 shows the treaties that are closely related to minority rights, indigenous peoples' rights, and/or the right to higher education and state statuses in relation to these respective treaties.

Brazil

Constitution of the Federative Republic of Brazil

The seventh and current version of the Constitution of the Federative Republic of Brazil was adopted into force on October 1988. The Brazilian Constitution includes the latest reforms as of 1996 and was last updated in July 2010. Nearly 70 amendments have been made to the Constitution since 2010—most of which have to do with changes in government structure and the nation's ever-evolving economy (World Intellectual Property Organization, 2013). Although the Constitution is restricted to the architecture of national laws and policies, the drafters also acknowledge the realm of international law. Article 5, Para. 1 of chapter 1, titled "Individual and Collective Rights and Duties" reads: "The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party." This is a rare occurrence within national constitutions, but it also reveals the federal government's commitment to international treaties it is also party to.

In addition to acknowledging the implications of international human rights law, the Brazilian government also conveys a degree of mindfulness regarding the diversity of its

bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty. In the case that one or more states are not listed for a particular international instrument, this simply means the states are not party to the respective treaty.

population, particularly addressing a need for pluralism and justice, the prevalence of inequality, and the identities and rights of ethnic, racial, and indigenous persons and groups. Article 3 lays out the “fundamental objectives” of the state: 1) “to build a free, just and solidary society”; 2) “to guarantee national development”; 3) “to eradicate poverty and substandard living conditions and to reduce social and regional inequalities”; and 4) “to promote the well-being of all, without prejudice as to origin, race, sex, color, age and any other forms of discrimination.” Article 4 lists the governing principles of these objectives: 1) “national independence”; 2) “prevalence of human rights”; 3) “self-determination of the peoples”; 4) “non-intervention”; 5) “equality among the states”⁵⁶; 6) “defense of peace”; 7) “peaceful settlement of conflicts”; 8) “repudiation of terrorism and racism”; 9) “cooperation among peoples for the progress of mankind”; and 10) “granting of political asylum.”

Article 215(Para. 1) further demonstrates the responsibility of the state in promoting cultural preservation of its marginalized populations: “The State shall protect the expressions of popular cultures, Indian [indigenous] and Afro-Brazilian, as well as those of other groups participating in the national civilization process.” There are several other cases, in which the Constitution includes statutes that reflect the significance of protecting the cultural diversity and preservation of vulnerable peoples and groups. It is authorized that the state “shall ensure to all the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions” (Article 215), and also “[t]he law shall provide for the establishment of commemorative dates of high significance for the various national ethnic segments”⁵⁷ (Article 215, Para. 2).

⁵⁶ Brazil is comprised of 26 states and one federal capital.

⁵⁷ Brazil has an annual “Black Awareness Day” on November 20 and an annual “Mixed Race Day” on June 27.

Thus, there are definite indications of the government's awareness of the cultural diversity of its population and of its diverse communities. Furthermore, the government recognizes that they comprise the "sources of national culture." Thus, the Brazilian government is responsible for both "support[ing] and foster[ing]" the significance and influence of these cultural communities (e.g., Afro-descendants and indigenous peoples), and one of the means of doing so, as introduced into law is through the establishment of commemorative dates that highlight these cultural contributions. In Article 216, the definition of cultural heritage is explained, and the preservation of this heritage, including that of indigenous knowledge systems, is also expanded upon: "The Brazilian cultural heritage consists of the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form the Brazilian society." Thus, there is an acknowledgement of both tangible and intangible aspects of identity, moving beyond common notions and fetishizing of material or physical culture. These "material and immaterial" modes of culture include: "forms of expression"; "ways of creating, making and living"; "scientific, artistic and technological creations"; "works, objects, documents, buildings and other spaces intended for artistic and cultural expressions"; and "urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value" (Article 216(1-5)). These various aspects of cultural identity—customs, traditions and practices (i.e., protocol); ways of knowing or knowledge systems; artistic, scientific, and technological innovations; and edifices and structures of traditional significance encompass—nearly convey an awareness of the multifaceted notions of culture and their diverse meanings and implications for various peoples and groups. Indigenous and Afro-descendant customs, knowledge, and traditions are echoed here, particularly regarding

the value of cultural diversity and self-preservation of indigenous peoples and minorities, including Afro-Brazilians (even though no persons or groups are directly referenced here). In Article 216(Para. 1) the government is called upon—“with the cooperation of the community”—to lawfully “protect and promote the Brazilian cultural heritage” via inventories, registries, decrees, and other records. Stating the government’s role “*with* [emphasis added] the cooperation of the community” rather than “in cooperation with the community” indicates that the community must cooperate with the government instead of engaging in mutual cooperation and consultation, but education is not included as one the avenues of achieving cultural protection and preservation.

Noticeably, the Constitution focuses more explicitly on indigenous peoples than any other peoples or groups. Afro-Brazilians are only mentioned once specifically and then implied on a few other occasions. “Dos Índios” (“The Indians”) is the title of the Constitution’s chapter VIII, which mostly covers land rights of indigenous peoples in Brazil. The introduction of Article 231 is the only section of the chapter that is not limited to land rights alone:

Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.

Nevertheless, it is uncertain *how* indigenous peoples’ “social organization, customs, languages, creeds and traditions” are “recognized”; and though the language implies that indigenous peoples are guaranteed inherent rights to their lands, the government is required to “demarcate” their boundaries, which contradicts this notion of “original rights to the

lands they traditionally occupy.” For instance, regarding the permanence of indigenous peoples’ lands, it is stated: “The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein” (Article 231, Para. 2). The term “usufruct” has a meaning that questions what the authors intended regarding the “permanent” possessors of the land. In the *Oxford English Dictionary* (2015a), usufruct means “The right to enjoy the use and advantages of another’s property short of the destruction or waste of its substance.” This definition suggests that indigenous peoples have the “exclusive usufruct” to natural resources of land they do not own. Paradoxically, “permanent possession” of the land is not equivalent to ownership of the land.

In addition to addressing the rights of indigenous peoples, Afro-Brazilians, and “other groups,” their inclusion in education and the right to education are also underlined in the Constitution. Education of the cultural diversity and history of the state is required by law. Article 242, Para. 1 reads: “The teaching of Brazilian History shall take into account the contribution of the different cultures and ethnic groups to the formation of the Brazilian people.” While it is meaningful to recognize the contributions of the diverse cultures and groups of Brazil within a historical context, it is equally—if not more—important to address their present contributions (and experiences) as well. Education, in general, is considered “a right of all,” and it is identified as a “duty of the State and of the family,” which “shall be promoted and fostered with the cooperation of society, with a view to the full development of the person, his preparation for the exercise of citizenship and his qualification for work” (Article 205). Again referencing “with the cooperation of the society” the government, as well as families or households, must ensure that education is intended to guarantee the

development and advancement of one's citizenship, as well as secure employment. This education is to benefit "the full development of the person" (though the pronoun references that follow are in the masculine third person "his," it is assumed that this applies to all persons regardless of gender or sex), so all the all-encompassing capacities and potentialities of education are implied here.

The "principles" upon which general education should be based include: equality of access and status: "equal conditions of access and permanence in school"; the right to access knowledge, to study, and to learn: "freedom to learn, teach, research and express thought, art and knowledge"; diversity of teaching methods and styles and educational institutions: "pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions"; free education in public schools; "appreciation of the value of teaching professionals" by "guaranteeing, in accordance with the law," professional training and development for teachers at public schools, a "professional minimum salary," and admissions to teaching positions are solely based on national public entrance exams and teaching credentials; "democratic administration of public education, in the manner prescribed by law; and a "guarantee of standards of quality" (Article 206(1-7). Although, not all these seven requirements of education could necessarily be defined as "principles," they do represent the standards upon which the government upholds for education in general. Equal access and quality of education are also very abruptly included among these principles, but *how* equal access and quality standards are to be enforced and upheld are absent from this article. Nonetheless, Article 211(Para. 1) further expands on the responsibility of the state to ensure equal and equitable access to quality education through financial support of

public education systems and institutions (as private education is not addressed here): The government is required to

finance [public schools] and shall have, in educational matters, a redistributive and supplementary function, so as to guarantee the equalization of the educational opportunities and a minimum standard of quality of education, through technical and financial assistance to the states, the Federal District and the municipalities.

Thus “equalization of educational opportunities” (i.e., equitable measures) and “a minimum standard of quality” are dependent upon government support—financial and otherwise—at the federal, state, and municipal levels. In this same article, it is emphasized that primary and secondary education hold precedence above tertiary education: “The states and the Federal District shall act on a priority basis in elementary and secondary education” (Article 211, Para. 2) and that “In the distribution of public funds, priority shall be given to the providing for the needs of compulsory education (i.e., primary and secondary education), as set forth in the national educational plan [discussed in a later sub-section]” (Article 211, Para. 3). Thus, considerations for higher education are not a “priority” when juxtaposed to primary and secondary levels of education.

A “definition,” or more so, the prescribed roles and relationships of higher education institutions are introduced in Article 207: “The universities shall have didactic, scientific, administrative, financial and property management autonomy and shall comply with the principle of non-dissociation of teaching, research and extension.” Each university, therefore, should have control over its own affairs, ensuring that they maintain a relationship between teaching, research, and extension programs. The government does not define the moral, academic, or administrative affairs of universities. Access to higher education is

mentioned in the article that follows: “The duty of the State towards education shall be fulfilled by ensuring . . . access to higher levels of education, research and artistic creation according to individual capacity” (Article 208(5)). Access to individual capacity, as discussed in the previous chapter neglects consideration of unequal capacities at the individual level due to systemic inequalities that far precede schooling at the tertiary level. In spite of the government’s freedom of autonomy at the tertiary level, Article 214 reveals the government’s intent to standardize education in the country by introducing a national education plan—across all levels of education—with five main initiatives: 1) “eradication of illiteracy”; 2) “universalization of school assistance”; 3) “improvement of the quality of education”; 4) “professional training”; and 5) “humanistic, scientific and technological advancement of the country.” Equal or equitable access is not among the five main initiatives presented, but improving the overall quality of education is one of the priorities. The national education plan is discussed in more detail later in a sub-section.

While study and innovations in science and technology hold great significance in the Constitution (mentioned on 27 and 23 occasions, respectively), especially for advancing socioeconomic development, research, and teaching and learning in higher education (“universities [or more specifically, “scientific and technological research institutions”] are permitted to hire foreign professors, technicians and scientists as provided by law” (amendment to Article 207)), the chapter entitled “Science and Technology” is completely separate from the education section in spite of its very close association to the characteristics and outcomes of higher education. Why this disassociation is made, therefore, is unclear.

Lei de Diretrizes e Bases da Educação (Law of Guidelines and Basis for National Education)

Lei de Diretrizes e Bases da Educação (LDB) was signed in 1996. Passing of LDB was the first attempt of the Brazilian government to indicate its understanding that education was of national concern and responsibility. This milestone was the first step, on behalf of the government, to organize and provide standardized references at the national level, addressing a wide spectrum of educational needs and a recent government investment in education (Mossini, Marcondes, & Teodoro, 2013). LDB addresses: the scope of education covered by the legislation, the principles and purpose of education, the right to education and to educate or teach, the organization and structure of education, levels of education and methods of teaching (at the levels of: basic education, early childhood, primary or elementary education, secondary education or high school, “mid-level” technical and/or vocational education, youth and adult education, professional education, higher education, and special education), education professionals, financial resources, general provisions, and temporary provisions. Article 1 of the legislation specifies that education includes: “the formative processes taking place in family life into everyday life, at work, in education and research institutions, social movements and civil society and cultural events.” Education, as referred to in this legislation, is specific to formal education: “the education that develops predominantly through education in the institutions themselves” (Article 1.1) and regarding its applicability, “Schooling should be bound to the working world and social practice” (Article 1.2). Education, as “defined” in the first article, however, suggests to be influenced by informal sources of education as well (i.e., family life, culture, and social movements). Thus, “Education, the duty of the family and the state, inspired by the principles of freedom and ideals of human solidarity, is for the full development of the

student, his preparation for the exercise of citizenship and his qualification for work” (Article 2). This pattern of education and its relationship to the labor market already prominently emerges within the first two articles of LDB.

Focusing on equal and equitable access to quality higher education for minorities and indigenous peoples, however, LDB initially and briefly introduces these issues in terms of required principles of the national education system: “equal conditions for access and staying in school” (Article 3(I)); “freedom to learn, teach, research and promotion of culture, thought, art and knowledge,” which promotes notions of cultural diversity and knowledge, as well as inclusive education (Article 3(II)); “pluralism of ideas and pedagogical concepts” (Article 3(III)) and “respect for freedom and appreciation to tolerance,” which both further emphasize the concept of unity in diversity and encouragement of diverse educational and curricular approaches, (implicitly) including minority and indigenous knowledge systems; “professional enhancement of school education” (Article 3(VII)) and “standard of quality assurance” (Article 3(IX)) both focus on improving and maintaining a specific standard or measure of quality within all levels of education; “linking between education, work and social practices” (Article 3(XI)); and “consideration of ethnic-racial diversity” (Article 3(XII)).

This last principle of recognizing cultural diversity is evident in several sections of LDB. Complementary to the Constitution’s law requiring the “establishment of commemorative dates of high significance for the various national ethnic segments” in the country (Article 215, Para. 2), LDB has named November 20 as “Dia Nacional da Consciência Negra” or “National Black Awareness Day” (Article 79-B). According to the UNESCO Office in Brasilia (2012), National Black Awareness Day was envisioned by poet, professor and researcher Oliveira Silveira (1941-2009) from the Brazilian state of Rio

Grande do Sul. The proposed date is meant to celebrate a regained awareness by the Black community about its great worth and contribution to the progress and diversity of the nation.

Also resounding the requirements of the teaching of Brazilian history legislation in the Constitution, LDB's Article 26.4 states: "teaching of history in Brazil will take into account the contributions of different cultures and ethnic groups that form the Brazilian people, especially the indigenous, African and European backgrounds," but unlike the Constitution, this article explicitly mentions indigenous and African influences, as well as European (Asian was not included in spite of comprising one of the four major ethnic/racial groups in Brazil). Promotion of these history lessons, however, are limited to the category of "basic education." As a matter of fact, Article 26a(1-2) emphasizes the necessity to learn about Afro-Brazilian and indigenous cultures, including their history, their "struggle" in Brazil, and their roles in the "formation of the national society" (26a(1)). The history of Afro-Brazilians and indigenous peoples in Brazil "will be delivered within the entire school curriculum, especially in the areas of arts education and Brazilian literature and history" (26a(2)), which suggests that the contributions of Afro-descendants and indigenous peoples do not extend to the sciences. Article 28, Para. 1 is rather unique to the status of indigenous and quilombola (Maroon) schools:

The closure of Indigenous and Maroon [quilombola] schools must be preceded by a statement of the legislative body of the respective education system [the municipal or state educational ministry that has jurisdictional authority of where the school is located], which must consider the justification presented by the [Ministry of

Education], the analysis of the diagnosis of the impact of the action [to close the school], and the manifestation of the school community.

This article manifests the government's preemptive plan and awareness that it is familiar with the closing of indigenous and quilombo schools due to a number of undisclosed reasons, and/or it anticipates that the schools will close due to a number of undisclosed reasons. Requiring triangulation of evidence to justify the closure of an indigenous or quilombola school may also suggest that opposition to such schools prevails within Brazilian society even though the "justification presented" by the Ministry of Education is left unexplained in LDB and the original legislation that this statute is based upon. Nonetheless, schools for indigenous and quilombola peoples and communities are singled out, while Afro-descendant schools are completely omitted.

Similar to their coverage in the Constitution, the education of indigenous peoples and communities holds greater weight than the education of Afro-descendants in LDB. For instance, it is required for the government, in collaboration with its "agencies for culture and assistance to the Indians," (not in collaboration with indigenous peoples and communities directly, however) to "develop integrated teaching and research programs . . . for bilingual and intercultural education for indigenous peoples" (Article 78). These "general provisions" for the education of indigenous peoples are based on the following objectives: 1) to maintain the historical records, "ethnic identities," and appreciation of languages and sciences of indigenous peoples and their communities (Article 78(I)); and 2) to safeguard access to information and technical and scientific knowledge from national, "other Indian," and "non-Indian" societies for indigenous peoples and communities (Article 78(II)). The government, therefore, seems to play a central role in the educational strategies and priorities of the state's

indigenous communities. However, regarding its establishment of teaching and research programs in intercultural education, indigenous peoples are to participate in the planning process (Articles 79-79.1). Concentrated efforts on indigenous peoples' education in the national education plan (discussed in a later sub-section) are initiated in LDB as well. The required national education plan objectives for indigenous education laid out in LDB include: "strengthening [i.e., self-preservation of] the socio-cultural practices and the mother tongue of each indigenous community"; "maintain[ing] programs of specialized [educational or teaching] staff training"; "develop[ing] curricula and programs, including . . . corresponding cultural [contexts] to their communities"; and "prepar[ing] and publish[ing] systematically specific and differentiated teaching materials (Article 79.2(I-IV)). With all the emphasis on cultural and identity preservation of indigenous peoples and communities, it was interesting to discover that there were no indications of indigenous peoples having autonomy over their own education and schooling (if they desire it). Within higher education, vaguely-expressed special measures are also permitted in respect of indigenous traditions "without prejudice to other actions" in both public and private universities in the form of education, "student assistance [offered to low-income students to help them enroll and stay enrolled in higher education]," [and] to "stimulate research and development of special programs" (Article 79.3). This is the first and only reference to higher education for either indigenous peoples or Afro-Brazilians in the legislation.

General access to higher education is more visible in portions of the text of LDB, but again, it is of lowest priority when compared to access to primary and secondary schooling: "In all administrative spheres, the Government will ensure first access to compulsory education, according to this article, looking then to the other levels and types of

education, as the constitutional and legal priorities” (Article 5.2). Of course, the difference between access to “compulsory education” and higher education is that access to the latter is based on very different criteria; it is not freely open to all as primary education is. “Access to higher levels of education, research and artistic creation is according to individual capacity” (Article 4(V)). This article is an exact duplicate of Article 208(5) of the Constitution regarding access to higher education. The same argument for the disregard of unequal and inequitable opportunities for capacities to develop at the earliest stages of schooling still stands. Additionally, “higher levels of education, research,” and arts are not solely limited to general universities and colleges, but they are definitely included as one form of higher learning (as indicated in the various levels of education discussed in LDB that are post-secondary (e.g., professional education, adult education, higher education)). This clause on access to higher education has not been amended in spite of the passing of Lei de Cotas (Quota Law) in 2012 (discussed in the following sub-section). Most likely, the government did not find it necessary nor contradictory to amend the statute to address special measures for access to higher education for minorities, indigenous peoples, and low-income households, especially since Article 5.5 reads: “To ensure compliance with the requirement of education, the Government will create alternative forms of access to different levels of education, regardless of previous schooling.” Higher education, therefore, is implied to be included among the “different levels of education.” Although access to higher education is sporadically addressed in parts of LDB, chapter 4 of the law is devoted to guidelines regarding higher education. Regarding this discrepancy, therefore, there is a vague reference to undergraduate admissions processes in higher education, stating that admissions are “open to candidates who have completed high school or equivalent and have been classified

in the selective process” (Article 44(II)). Furthermore, the federal and state governments are required to “progressively correct disparities in access and ensure the minimum standard of educational quality” (Article 75).

Quality or standards of education are to be at a “minimum,” which is defined as “the variation and minimal quantity, per student, of essential inputs for the development of the teaching-learning process” (Article 4(IX)). Regardless of this “definition,” the minimum standard or measure of quality is quite vague and nearly indiscernible to comprehend. Nevertheless, it is the responsibility of the state to “ensur[e] national evaluation process[es] of school performance in primary, secondary and higher education, in collaboration with education systems, [aim] at setting priorities and improving the quality of education” (Article 9(VI)). Reiteration of at least a minimum level quality or standard within higher education is also factored in regarding financial support of higher education (Article 71(I); Article 74; Article 75.2). There is an exception in Article 47.4 regarding the offering of evening classes at higher education institutions, which stresses the importance of maintaining “the same quality standards maintained during the day . . . ensuring [a] necessary budget forecast” at public institutions. Hence, equal levels of quality in day and evening course offerings are dependent upon the availability of funds.

Lei de Cotas (The Quotas Law)

Lei de Cotas (Law No. 12.711) was unanimously passed by the Supreme Court of Brazil in April 2012 and per Article 9 of the legislation, the law was enforced on the same day it was signed by President Dilma Roussef (August 29, 2012). When slavery ended in 1888, there were no segregation or U.S. “Jim Crow-like” laws in Brazil, resulting in a largely “mixed-race” demographic of mostly European, African, and Amerindian descendants.

Regardless of the absence of such laws, social and economic disparities along “racial” lines are significantly pronounced throughout the country. So the decision to implement a nationwide quota policy in all public universities was markedly uncharacteristic of Brazil’s legislative history in the area of race relations, but some legislators and government officials felt it was necessary to make such a dramatic shift in order to address the visible schism. Brazil’s education system is highly decentralized, so the emergence of the first few independent affirmative action and quota policies surfaced at only a few universities (e.g., State University of Rio de Janeiro, University of Brasília). Lei de Cotas (2012 Quota Law), a form of affirmative action passed by Superior Tribunal de Justiça (Superior Court of Justice), is a federal law applicable to all public universities and technical colleges.

The intended goal behind Lei de Cotas is to achieve equitable access to higher education for select underrepresented populations at public higher education institutions throughout the state, and it has four separate criterion options in establishing quotas for admissions. Thus, the quota legislation somewhat conflates which persons or groups are identified and targeted, particularly, across economic and ethnic or racial lines. Article 1 of the law specifies that the law is reserved for access to public universities for undergraduate students who have successfully completed public secondary school. It further mentions that regarding “filling vacancies referred to in this article, 50% (fifty percent) should be reserved for students from families with incomes at or below 1.5 the minimum wage (one-and-a-half of the minimum wage) per capita” (Article 1, Para. 1). Thus, the remaining 50% of admissions are reserved for students who come from households with a family income above minimum wage and a half salary. So the determining factor in this instance is on income level. Although the first article of this affirmative action legislation indicates

eligibility criteria for quotas is based on socioeconomic status, it is evident that the authors of the law recognize a correlation between race or ethnicity and class in Brazil. Article 3 mentions that the mandated one-half of admissions spots reserved in every public university shall be filled, per course and turn, by self-declared black, mixed race and indigenous peoples, in at least equal proportion to the population of blacks [“pretos”], browns [“pardos,” which refers to persons of mixed race, usually black and white] and indigenous peoples [indígena] in the unit of the Federation where the institution exists, according to the latest census of the Brazilian Institute of Geography and Statistics (IBGE).

Thus in addition to eligibility based on income, those students who self-identify themselves as “black, mixed race, or indigenous” are also eligible to apply for admission to public universities—wealthy and poor alike. In other words, first of all, at least 50% of admissions seats at public universities must be reserved for public school students (since most wealthy, Euro-descendant students who attend private schools receive privileged academic training, and therefore, have a disproportionately competitive academic advantage when applying to public universities in the country (Cottrol, 2004)). Then, of the 50% of seats reserved for public school students at least half of those seats are reserved for applicants whose family household incomes are 1.5 times the minimum wage. Lastly, if for example, it was assumed that 51% of the state of Rio de Janeiro is populated by Black, mixed race, and indigenous peoples, then 13 seats must be reserved for those demographics whose family incomes are less than or equal to the income threshold, and 13 other seats must be guaranteed for that same demographic with more financially stable families. Within this framework, a low-income black or mixed-race student applying to a state university (which in Brazil are

traditionally the best and cheapest schools (Cottrol, 2004)), has “four distinct scenarios of review” by an admissions counsel regarding admission: one under general admissions, the second under the public school quota, another under the low-income sub-quota, and lastly under the state demographic sub-quota. However, admission for these four respective (and often overlapping) groups is dependent upon the proportion of the population they represent in the state (i.e., “the unit of the Federation”) in which the university is based. For example, in the northeastern state of Bahia, Black, mixed race, and indigenous peoples represent a total 80% of the population, while in the southern state of Santa Catarina, they only make up 16% of the population (H.J., 2013), and these statistics are based on the most up-to-date IBGE census data, so there is no guarantee that all peoples are equally represented and accounted for in IBGE’s data. Furthermore, there is no evidence that self-declared classifications on the basis of class, ethnicity, race, or indigeneity are aligned with those students who self-declare themselves as black, mixed race, or indigenous for admissions to higher education institutions, and since the minimum total of black, mixed race, and indigenous peoples within a state is also a determining factor for admissions to higher education, there are no distinctions made between them. Reliability on such data, therefore, is faulty. In addition to 50% of admissions reserved in all federal or public universities, administrations at “mid-level technical education” colleges are also to reserve “at least 50%” of their spaces for admission to students who complete primary education.

Article 6 calls for a collaborative monitoring and evaluation of the quota law: The Ministry of Education and the Secretariat for the Promotion of Racial Equality [(SEPPIR)] “shall be responsible for monitoring and evaluation of this law, in consultation with Fundação Nacional do Índio (National Indian Foundation) or FUNAI program.” How

frequently this monitoring occurs, however, is not specified. Replacing the former Serviço de Proteção ao Índio (SPI) or the Indian Protection Service, FUNAI is a unit of the Brazilian government's Ministry of Justice, and it was established under Law No. 5.371 on December 5, 1967. FUNAI's "institutional mission is to protect and promote the rights of indigenous peoples in Brazil," including the sustainable development of indigenous peoples and their lands (FUNAI, 2015). According to Survival International (2013), FUNAI also has a General Coordination Unit of Uncontacted Indians (CGII), making FUNAI "the only government department in the world which is dedicated to the protection of indigenous peoples who have little or no contact with national society and other tribes." While the role and function of FUNAI may be unique, it has also been responsible for some controversies regarding the rights of indigenous peoples, and although FUNAI may work *with* indigenous peoples and communities to some extent, there is no documented evidence that indigenous peoples work at FUNAI (Minority Rights Group, 2007). Nonetheless, FUNAI's successes and failures are far beyond the reach and scope of Lei de Cotas. Furthermore, the cooperative monitoring efforts of the Ministry of Education, SEPPIR, and FUNAI are all either agencies or subdivisions of the federal government excluding civilian representation of any kind. There is no collaborative or consultative measures with targeted populations that would be directly affected (i.e., poor or low income, Black, mixed race, indigenous).

Article 7 addresses the evaluation of the quota program following a 10-year period from when it was passed into law [in 2022], particularly "reviewing the special access program for black, mixed race, and indigenous students as well as those who have completed secondary education at public schools, to higher education institutions. Although the law has not yet been fully implemented, an interim monitoring and reviewing process seems to be

lacking; there is no mention either of any research or assessment to be conducted by the government regarding upholding and improving the quality of education under this new legislation. Article 8, the final article of the legislation, grants public universities and technical colleges a four-year grace period, requiring that at least 25% of the vacancies (12.5%) be reserved each year until 2016, at which time 50% of vacancies must be reserved for “Black, mixed race, and indigenous students” and/or students from poor or low-income households.

Plano Nacional de Educação (National Education Plan)

Plano Nacional de Educação (PNE), translated into the “National Education Plan” was voted on and approved by the Brazilian Chamber of Deputies on June 30, 2014. PNE is intended to gradually increase the amount of resources invested in education until it reaches 10% of the nation’s gross domestic product (GDP) (Nascimento, 2014). According to the Constitution, in the next ten years, the 20 PNE goals will have to be met, including: raise literacy rates; increase access to childcare facilities, high schools, professional education entities, and public universities; free, universal of school care for children between four and five years of age; and the availability of full-time schooling for at least 25% of middle-school students. By June [2015], states and municipalities will have one year to develop their own education plans, which must be based on this approved national plan” (Nascimento, 2014). The purpose of PNE is to: 1) Increase school enrollment rates; 2) improve quality at all education levels; 3) “overcome social and regional inequalities related to access, permanence and success in schools”; and 4) democratize the management of public education (Simões & Taranto Goulart, 2006, p. 3).

Although PNE includes 20 goals, this sub-section focuses on only three of them that are specific to higher education—12, 13, and 14 (Goals 15-18, although relevant to higher education to some degree, focus on the standardized and advanced training of teachers of basic education, and therefore, are not discussed in this section). Goal 12 aims to increase the gross and net enrollment rates in higher education, while ensuring quality of education and expansion of admissions in public institutions. Goal 13 addresses quality improvement of higher education and increasing the number of higher education faculty with master's and doctoral degrees. Finally, Goal 14 targets an increase in overall enrollment rates at the graduate level of study. These three goals are highly relevant to the inquiry, particularly since they target goals related to access and quality within higher education institutions and systems. Each of these goals also has a number of practical strategies associated with them in order to achieve the corresponding goal, but again, only relevant strategies are analyzed here.

More specifically, the twelfth goal of PNE is: to increase the gross enrollment rate in higher education to 50% and the net rate (people between the ages of 18 and 24 years) to 33%, while maintaining a quality-level of provision and expansion of new registrants to at least 40% within the public sector. Access-related strategies of concern for Goal 12 include: optimizing the capacity of the physical structure and human resources of public higher education institutions in order to “expand access and graduation” rates (12.1); promoting the offering of free public higher education primarily for teacher training and teachers of basic education, particularly in the areas of science and math and to fill in the gaps of professions in specific fields (12.4); promoting diversity by broadening inclusion policies and student assistance (for students from low-income households) within public and private higher education institutions, as well as “reduc[ing] ethnic-racial inequalities” by increasing access

and retention rates of “students graduating from public schools, Afro-descendants, indigenous peoples, and students with disabilities, pervasive developmental disorders, and high ability or giftedness, in order to support their academic success” (12.5); increasing the average participation of “historically disadvantaged groups in higher education, including through the adoption of affirmative action policies, as according to the law (12.9); ensuring conditions for accessibility in higher education institutions in the form of legislation (12.10); “extending specific services to rural populations, indigenous communities, and quilombolas [Maroons] relating to access, retention, completion, and training of professionals [in order] to work [with] these populations” (12.13); institutionalizing a program composed of a digital collection of bibliographic and audiovisual references for undergraduate courses, ensuring accessibility for persons with disabilities. (12.15); and consolidating national and regional selection processes for access to higher education as a way to overcome isolated or outlying entrance exams (12.16). There are several broad strategies proposed to expand access to higher education institutions, therefore, ranging from physical restructuring offering free public higher education to promoting diversity policies and implementing affirmative action legislation, especially for indigenous peoples, Afro-descendants, quilombolas, persons with disabilities, and persons from low-income households. It is unclear how some strategies can help improve access. For instance, how optimizing the physical structures of higher education institutions and increasing human resources help facilitate higher enrollment rates is unclear. Other strategies, on the other hand, such as implementing inclusion policies or affirmative action legislation are directly related to equitable access measures for disadvantaged groups.

Goal 12 also includes strategies that highlight the need for improving quality within higher education institutionally and systemwide, such as: promoting studies and research to examine the need for coordination between training, curriculum, research and the world of work, considering the economic, social and cultural needs of the country” (12.11); consolidating and expanding programs and actions to encourage student mobility and teaching of undergraduate and graduate courses in both national and international contexts, owing to the enrichment of higher education (12.12); mapping the demand and provision of top-level staff training, particularly in the math and sciences, considering the development needs of the country, technological innovation, and improving the quality of basic education (12.14); restructuring and improving the quality of decisions regarding evaluation, regulation, and supervision of higher education authorization procedures (i.e., courses, institutions, accreditation) (12.19); and strengthening the physical networks of multifunctional laboratories of ICT educational services (IES) and ICTs in the strategic areas defined by policy and national science strategies, technology, and innovation (12.21). Quality improvements within higher education for Goal 12 are concentrated in advancing material and physical initiatives such as: preparedness for the workforce, internationalization of higher education through study and teaching, high-level training of teaching staff in STEM fields, improvement of administrative measures, and solidifying and expanding relationships through IES and ICT development and delivery. However, there are no strategies introduced that specifically aim to serve indigenous peoples, Afro-Brazilians, or disadvantaged groups (probably since the question of equal or equitable access is more relevant to these respective populations).

The next goal, Goal 13, is set to “increase the quality of higher education,” as well as increase the number of master’s and doctoral degrees among professors or instructors throughout the Brazilian higher education system to 75% and to ensure that at least 35% of all faculty have doctoral degrees. Consequently, by proposing this goal, it is assumed that increasing the number of graduate degrees among higher education teaching staff will in turn help increase the quality of higher education overall. “Perfecting the Sistema Nacional de Avaliação da Educação Superior” (SINAES) or National Evaluation System of Higher Education by “strengthening assessment actions, regulation, and supervision” (13.1) is an example of maintaining quality standards, which was similar to what was iterated as a quality improvement strategy for Goal 12. Other relevant Goal 13 strategies include: encouraging ongoing self-assessments of higher education institutions, and subsequently, the participation of self-assessment committees to help improve methodologies of assessment (13.3); fostering improvements in the quality of pedagogy-related courses and degrees and ensuring faculty gain a combination of general and specific training and teaching practice, as well as education addressing “ethnic-racial relations, diversity and the needs of people with disabilities” (13.4); raising the standard of quality of universities so that they effectively carry out institutional research, especially in “strictly graduate” programs (graduate programs that only award master’s and doctoral degrees)⁵⁸ (13.5); encouraging the formation of a consortium of public higher education institutions to support action at the regional level by developing an integrated institutional development plan and ensuring greater national and

⁵⁸ There are two categories of graduate-level (post-tertiary) study in Brazil—“*lato sensu*” literally meaning “in the broad sense” or “broadly” and “*strictu sensu*,” meaning “in the strict sense” or “strictly.” The former refers to specialized courses and MBAs that result in a certificate of completion, and the latter refers to master’s and doctoral programs that confer diplomas and academic titles (i.e., “Master” or “Doctor”) (Significados, 2014).

international visibility in teaching, research, and online programs (13.7); and providing initial and ongoing training of technical and administrative staff members of higher education institutions and systems (13.9). Strategies related to improving the quality of higher education in Goal 13 are more aligned with improving the quality of education and training of faculty and staff and promoting transparency of institutions through self-accountability (via assessments), networking (via consortia), pedagogical education and training, and establishing institutional prominence at the national and the international levels. The aspect on pedagogical education and training of faculty was the only strategy that clearly indicated a benefit to disadvantaged groups and marginalized populations, and Goal 14 extends to including strategies that promote graduate-level study among students from these particular groups or communities.

The last goal of PNE discussed in this section—Goal 14—is to gradually increase the number of enrollments in strictly graduate programs, so as to achieve an annual conferral of sixty thousand master’s degrees and twenty-five thousand Ph.D. degrees nationally. In order to achieve this goal, there are strategies in place to increase means of financing for graduate study through official development agencies (14.1) and expanding the funding of graduate students through the financial aid program (14.3). Growing the number of graduate programs and their varying modes of delivery are strategies that the government also hopes to utilize in increasing enrollment in graduate levels of higher learning by: expanding the number of graduate courses offered including methods, such as distance learning resources and technologies (14.4) and growing the number of graduate programs, especially doctoral programs on new campuses, as part of public higher education institution expansion plans (14.6). Strategies such as the internationalization of research and strengthening national and

global research networks (14.9) and increasing the quality and quantity of scientific and technological research, innovations, and higher education and corporate partnerships (14.3; 14.10; 14.11; 14.15) convey that an increase in master's and doctoral degrees would help swing the state into a highly competitive position within the global market. Lastly, Goal 14 is also framed by strategies that promote social welfare and environmental justice including: implementing actions to reduce ethnic, racial, and regional inequalities and to encourage the involvement of rural populations and indigenous and quilombola communities to enter master's and doctorate programs (14.6); maintaining and expanding digital collections of bibliographic references for graduate courses, ensuring accessibility for people with disabilities (14.7); “encourage the participation of women in graduate courses, in particular those related to the fields of engineering, mathematics, physics, chemistry, computers and others in the sciences” (14.8); and

stimulate scientific research and innovation and promote the training of human resources that enhances the regional diversity and biodiversity of the Amazon and the Cerrado⁵⁹ and the management of water resources in the semiarid region to mitigate the effects of drought generating employment and income in the region (14.14).

PNE is the most comprehensive of the Brazilian laws covered in this section, and some of these strategies are more aligned with improving the quality of research, teaching, and learning, while expanding opportunities for access to higher education for disadvantaged groups, including women, indigenous peoples, quilombolas, Afro-Brazilians, persons with

⁵⁹ The Cerrado, covering 20% of Brazil, is not nearly as recognized as the Amazon. Nonetheless, like the Amazon, the Cerrado—the largest savanna (grassland ecosystem) in South America—is known for its native habitats and rich biodiversity, which are being destroyed at a much faster rate than those of the neighboring rainforest (World Wildlife Fund, 2015).

disabilities, and rural populations. Only a select few goals and strategies were discussed here, and overall, PNE goals are to be achieved within a ten-year period of legislation implementation. So although some of the strategies proposed sound more ambitious and optimistic than others, there is still time to apply them; and it will be interesting to see if and how they evolve in language and content as the national education plan progresses over time.

Iran

Iran's legislation is rather distinct from that of Brazil and New Zealand, particularly because its legislation and policies are based on an interpretation of Islamic law.⁶⁰ In this section, the focus will be on the Constitution, the Civil Code, the confidential memorandums of the Islamic Revolutionary Cultural Council, and the Ministry on Science, Research and Technology's letter to Iranian universities.

Constitution of the Islamic Republic of Iran

The Constitution of the Islamic Republic of Iran, adopted into law on October 24, 1979, has a unique preamble to the laws that are subsequently introduced, offering a historical account of the cultural, economic, social, and political climate of the nation as it transitioned during the Islamic Revolution of 1979. The introductory section offers a postcolonial narrative that reflects themes of struggle, oppression, resistance, and empowerment in the midst of "Western" domination, colonization, and imperialism. Victory was claimed by the Islamic Revolution due to its "unique characteristic[s]"—unlike Iranian movements of the past—of being "religious and Islamic" (Preamble). The introduction to

⁶⁰ The author believes it is important to emphasize that "Islamic law," as interpreted into state legislation varies from state to state. There is no "universal" understanding of Islamic law that has been exemplified thus far (An-Na'im, 2009).

the section immediately following the preamble, titled “The Vanguard of the Movement,” referring to the Islamic Revolution, reads like a hybrid of a liberation theology discourse and an epic narrative:

Imam Khomeini's crushing protest against that American plot, The White Revolution,⁶¹ which was a step taken with a view to strengthening the foundations of the despotic regime⁶² and consolidating Iran's political, cultural and economic links with World Imperialism, was the motive force behind the united uprising of the nation.

The Islamic Revolution, therefore, and its proponents are portrayed as victors, who managed to defeat the onslaught and oppression of a “Westernized” regime of tyrants because of their deviation “from the true Islam.”

From the beginning of the introduction of the articles, the foundation of the Iranian Constitution is revealed: Article 12 of the Constitution sets the religious legal framework for the entire Constitution: “The official religion of Iran is Islām and the Twelver Ja’fari school of [Shi’i]⁶³ religion, and this principle will remain eternally immutable.” It is thus declared that Shi’a Islām is the official religion of Iran, and the fact that it is “eternally immutable” highlights a very robust emphasis of its “permanence,” as dictated by the drafters of the Constitution. This article also marks the first reference to education in the Constitution, but it is a reference to religious education, in particular. Article 12 continues,

⁶¹ Launched by Shah Mohammad Reza Pahlavi in 1963, the White Revolution included a sweeping series of secular reforms in Iran. The Shah advertised the White Revolution as a step towards westernization, but many also believed he had political agenda; the White Revolution (a name attributed to the fact it was bloodless) was a way for him to legitimize the Pahlavi dynasty (Siavoshi, 1990).

⁶² This is a reference to the Pahlavi dynasty or regime under Mohammad Reza Shah Pahlavi.

⁶³ This insertion is included in the original text of the Constitution. This is not the author’s insertion.

Other Islamic schools . . . are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. In regions of the country where Muslims following any one of these schools of *fiqh* [Islamic jurisprudence] constitute the majority, local regulations, within the bounds of the jurisdiction of local councils, are to be in accordance with the respective school of *fiqh*, without infringing upon the rights of the followers of other schools.

Islamic schools in Iran are considered superior to any other educational institution in the country, particularly because of their strict adherence to *shari'a* (moral code or law of a prophetic religion) and *fiqh*. The extent and breadth of the legislative power bequeathed to such religious schools is another indication of their status and prestige, as according to the state. The core of this Constitution is its emphasis on following Islamic law.

Consequently, the Islamic Republic also makes it very clear who is included (and excluded) in its recognition of religious minorities. In Article 13 of the Constitution, it reads:

Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who within limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.

The recognized minorities are all religious traditions that preceded Islám, and therefore, Iranians belonging to any of the three religious communities are “the only recognized religious minorities,” and they also hold seats in Parliament. This article implicitly specifies a

differentiation between “Ahl al-Kitáb” or “People of the Book” (the “Book” refers to the book of divine revelation) refers to Muslims, Jews, and Christians specifically, and was later extended to include Zoroastrians (in Iran) as “dhimmi,” and therefore, it also implicitly specifies what religious minorities are excluded—all those that are not mentioned here. Dhimmi are non-Muslims (i.e., Jews, Christians, and Zoroastrians) who are protected by a contract between Muslim authorities and non-Muslims living in an Islamic nation or state. The contract is protected under Islamic law. When asked what the term “People of the Book” specifically referred to, Ayatollah Khomeini responded that “non-Muslims of any religion are najess” or unclean and *kafar*, meaning non-believers of God and deniers of the Prophethood of Muhammad (Nemat, 2008). When asked what the status of ‘Ahl al-Ketab (people of the book: Muslims, Jews, and Zoroastrians), was in relation to purity, he said: “Non-Muslims of any religion or creed are najess.” Correspondingly, the rights of “non-Muslims” are to be respected (to the limits of “Islamic justice and equity”):

In accordance with the sacred verse; (“God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes” [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran (Article 14).

So this dichotomy exists between Muslims (including the government) and “non-Muslims” even though the latter is to be treated according to the “norms and . . . principles of Islamic justice and equity.” Furthermore, it is stated that oppression is forbidden in Islám: “negation

of all forms of oppression, both the infliction of and the submission to it, and of dominance, both its imposition and its acceptance” (Article 2(6)(c)). A paradox exists, however, in that the rights of non-Muslims, according to their own religious or cultural beliefs, do not appear to be protected. Rather, only their rights, as dictated by Islamic law, are respected, meaning that some of their rights are not. These particular articles are introduced in chapter I of the Iranian Constitution titled “General Principles.” Thus the “general principles” lay out those who the constitutional laws are applicable to as well as those who are excluded from their protections and rights.

The role of the government is responsible for “ensuring political and social freedoms within the framework of the law” (Article 3(7)) and “the participation of the entire people in determining their political, economic, social, and cultural destiny” (Article 3(8)).

Furthermore, “the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres” (Article 3(9)) and “securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of-all before the law” (Article 3(14)) are based on the “framework of law” the Islamic Republic subscribes to. Those persons and groups that actually benefit from these rights and freedoms is limited to Muslims, Zoroastrians, Jews, and Christians (according to the Islamic Republic of Iran). So “participation . . . in determining . . . destiny,” freedom from “undesirable discrimination,” and “equitable opportunities . . . in material and intellectual spheres” do not apply for persons and groups who are not Muslim or belonging to one of the three legally recognized religious minority groups. There are some clear indications that regardless of the recognition of three religious minority groups, it is Islamic law that dictates the rights of the peoples. There are 28

independent references to Islám and 189 mentions of “Islamic” (excluding references to the “Islamic Republic”), including 12 occurrences of “Islamic criteria” and one reference to “Islamic law”). The lawful responsibility of the government in “the expansion and strengthening of Islamic brotherhood and public cooperation among all the people” (Article 3(15)) and “framing the foreign policy of the country on the basis of Islamic criteria, fraternal commitment to all Muslims, and unsparing support to the mustad’afin [the oppressed] of the world” (Article 3(16)) further elucidate the “framework” within which these laws function. These laws are based on the government’s understanding of “Islamic interpretation,” as is the identification of the “oppressed of the world.”

Chapter III of the Constitution, “The Rights of the People,” does not include any mention or reference to religious minorities, but rather to Iranian citizens who are considered “people of the book,” since this is already explicated in the preliminary chapter of the Constitution. Although Zoroastrians, Jews, and Christians are formally recognized as religious minorities and people of the book, it does not mean they are exempt from experiencing discrimination. In this chapter, the word “People” specifically refers to Iranian citizens “of the book.” Article 19 in chapter III indirectly addresses the rights of “tribal” peoples and racial, ethnic, and linguistic minorities: “All people of Iran, whatever the ethnic group or tribe, to which they belong, enjoy equal rights; and color, race, language, and the like, do not bestow any privilege.” Again, it is important to reiterate which peoples or groups are included in the category of “people” here; Bahá’ís, Mandeans, Yarsanies, and other non-disclosed religious minorities do not have rights regardless of their belonging to one or more of the social classifications listed in the article. Article 20 echoes a similar notion: “All citizens of the country, both men and women, equally enjoy the protection of the law and

enjoy human, political, economic, social, and cultural rights, in conformity with Islamic criteria.” Only Iranian “citizens” are granted such protections of the law, excluding national minorities from the same rights. As in many Islamic states, “Islamic criteria” (i.e., Islām and Islamic law or *sharī‘a* (moral code or law of a prophetic religion)) are defined to varying degrees by each state government. In other words, there is no consistent, universal interpretation or application of Islamic law around the world (as of yet) due to the adaptation of Islām to divergent political motivations and cultural beliefs or traditions (Said, 1978) and Iran’s government has its own interpretation as well.

Article 22 takes a noticeable shift from the articles preceding it, particularly due to its specification for conditional rights and protections of Iranians: “The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.” Upon further exploration of the Constitution, one can easily detect contradictions, such as in Article 23 regarding individual beliefs (as opposed to collective beliefs): “The investigation of individuals’ beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.” If Article 23 holds true, then would it not naturally disavow Article 13 regarding the recognition of “only” three religious minorities? The Iranian government has argued on numerous occasions that indeed there are no contradictory references, because “according to Islamic law,” the only people protected by any and all of the rights within the Constitution are “people of the book” (Yeor, 2002).

Regarding education, Article 30: “The government is responsible for providing the means for free public education for everyone up to the end of the secondary stage. It must expand free higher education to the extent of the nation’s capacity to do so.” The benefits of

education are also addressed, as in Article 43 of Chapter IV “Economy and Financial Affairs” reads:

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation, and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

1. The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education, and the necessary facilities for the establishment of a family

Thus, the economic and social benefits of education to the nation are addressed in this article, and most importantly, so it is its capacity to “[fulfill] human needs in the process of development while preserving human liberty.” Thus, the potential of education to promote socioeconomic development while ensuring the rights of the people is also recognized. It is also stated, that the government will achieve “the attainment of self-sufficiency in scientific, technological, industrial, agricultural, and military domains, and other similar spheres” (Article 3(13)), and although education (or higher education) is not referenced in this article, it is definitely assumed that higher education will be a key determinant in achieving “self-sufficiency” or independence from other states in these economically-driven sectors.

In chapter 4 of this dissertation, projected eminence surrounding formal education and higher learning in Persian and contemporary Iranian society were briefly addressed. Education is still perceived as a superior sphere of society, particularly higher education. Higher education is not always directly mentioned, but it is definitely implied in several sections of the Constitution. Article 2 of the Constitution presents the foundational

“system” of beliefs the Islamic Republic’s laws are based upon (e.g., the belief in one God, “divine revelation [i.e., Islám] and its fundamental role in setting forth the laws”; and “justice of God in creation and legislation,” to name a few). One of the beliefs mentioned in Article 2 that stands out for the purposes of this inquiry is about the significance of higher or advanced learning: “the exalted dignity and value of man [used as universal for humankind in this context], and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by a number of factors including “sciences and arts and the most advanced results of human experience, together with the effort to advance them further” (Article 2(6)(b)). Coupling the advancement of the arts and sciences with the attainment of equity, justice, and the like, not only reinforces the benefits of higher education, but it is elevated to the level of worship and upholding one’s “responsibility before God.” Comparatively, “the Islamic Republic of Iran has the duty of directing all its resources to . . . goals” (Article 3), including: “free education and physical training for everyone at all levels, and the facilitation and expansion of higher education” (very similar to Article 30) and “strengthening the spirit of inquiry, investigation, and innovation in all areas of science, technology, and culture, as well as Islamic studies, by establishing research centers and encouraging researchers” (Article 3(4)). The development and dissemination of knowledge in these fields through research and the establishment of research facilities are very much aligned with some of the capacities of higher education institutions and higher levels of learning. Furthermore, the expansion of free higher education institutions could potentially help advance and achieve this degree of knowledge-sharing.

The value and status of careers in education and higher education, in particular, is held in high regard in Iran, and this is evident by the fact that in order to draft and approve constitutional amendments or revisions,”[t]hree representatives from among the university professors,” along with representatives from the Islamic Consultative Assembly, judiciary branch, Council of Ministers, heads of the three branches of government, and ten representatives selected by the “Leader”⁶⁴ (to name a few), must also be included among those who comprise the Council for Revision of the Constitution (Article 177(9)).

Equity in education is not addressed, but “Islamic equity is”:

In order to ensure Islamic equity and cooperation in chalking out the programs and to bring about the harmonious progress of all units of production, both industrial and agricultural, councils consisting of the representatives of the workers, peasants, other employees, and managers, will be formed in educational and administrative units, units of service industries, and other units of a like nature, similar councils will be formed, composed of representatives of the members of those units. The mode of the formation of these councils and the scope of their functions and powers, are to be specified by law” (Article 104).

The law, as has been discussed above, is selective in which persons and groups it applies to, however.

Regarding language in schools, Article 15 specifies that Persian is the official language of the country, and therefore, “Official documents, correspondence, and texts, as well as textbooks, must be in this language and script,” but acknowledgement of minority

⁶⁴ An abbreviated reference to the Supreme Leader of Iran, who is the head of state and of the government. The Supreme Leader holds the highest ranking authority (political and religious) in the country.

languages is implied in the remainder of the article: “However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian.” While legally-recognized religious minorities are listed in the Constitution, ethnic or “tribal” peoples or groups are not identified more specifically. Due to its linguistic history of Islám, as the “language of the Qur’án and Islamic texts and teachings . . . and since Persian literature is thoroughly permeated by this language, it must be taught after elementary level, in all classes of secondary school and in all areas of study” (Article 16). However, there is no indication of the teaching or learning of Arabic (the original language of Islám) in tertiary levels of schooling as well. For the most part, higher education courses are taught in Persian (unless the discipline or study of focus is on Arabic and/or Islamic studies).

While quality of education or higher education is not a topic of discussion in the Constitution, plentiful statutes alluding to “Islamic criteria” make it clear that quality and standards of education would be interpreted by the Islamic Republic as according to Islamic law. As a matter of fact, Islamic laws appear to uphold a superior standard in the country’s legislative measures. Regarding pluralism for instance, “[p]olitical parties, societies, political and craft associations, and Islamic or recognized minority religious associations may be freely brought into being” as long as “no violation is involved of the principles of independence, freedom, national unity, Islamic standards, and the foundations of the Islamic Republic. No person may be prevented from joining, or compelled to join, one of the above” (Article 26). Another example is presented regarding the authority of judges in passing and approving legislation, which is forbidden, not only if it is beyond their executive power, but also if it is “in conflict with the laws or the norms of Islám” (Article 170).

Civil Code of the Islamic Republic of Iran

The Civil Code or *qánún-e madaní* is “a series of regulations controlling all civic and social relations between individuals in the various circumstances of their lives” (Siavoshi, 1990), and its laws are dictated by Islamic law. It was originally drafted in the 1920s and completed in 1935.

The first explicit or implicit mention of education in the Civil Code is in reference to the moral education of children:

If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother who are in charge of its custody the court can take any decision appropriate for the custody of the child on the request of its relatives or its guardian or the Public Prosecutor (Article 1173).

The gravity of maintaining the physical wellbeing of a child is equivalent to nurturing the child’s moral education. Furthermore, moral education is not only the responsibility of the parents, but it is also the state’s obligation to ensure that the moral education of children is fostered and developed. General education is also acknowledged as an imperative responsibility to be nurtured by parents (Article 1178) and husband and wife (1104). Similarly, the remaining statutes on education focus on the parental roles and responsibilities of the education of the child (Article 1169; Article 1170; Article 1178; Article 1191).

Aside from the importance of moral education and the general education of children holding great significance in the Civil Code, discourses regarding education—whether formal or informal—are limited to children. Higher education is not addressed in any section of the Civil Code, as there are no other direct or indirect references to higher levels of learning

among adults. Additionally, there are no references to any minority groups, resulting in a gap between its intended role to serve as an extension of the Constitution.

Islamic Supreme Revolutionary Cultural Council's 1991 Memorandum

On February 25, 1991, a confidential memorandum was issued by the Islamic Supreme Revolutionary Cultural Council (ISRCC) on “the Bahá’í question” and signed by Supreme Leader Khamenei himself, marking an increase and systemization in efforts to thwart the development of the Iranian Bahá’í community through more “silent” means (Affolter, 2005; Buck, 2003; International Federation for Human Rights, 2003). The confidential memorandum, also known as the “Golpaygani Memorandum,” since it was personally drafted by Dr. Seyyed Mohammad Golpaygani, Secretary of the ISRCC and “Head of the Office of the Supreme Leader” (of Ayatollah Ali Khamenei) was brought to the attention of the public in a report by the then UN Human Rights Commissioner Mr. Galindo Pohl (Commission on Human Rights, 2003), and the policy recommendations of the document are still in force (Affolter, 2005; BIC, 2014; Buck, 2003). In spite of the confidential or private nature of the memorandum, it bears semblance to a national policy that would otherwise be public (even though the words “CONFIDENTIAL” are printed at the top of the document conveying the government’s surreptitiousness), organizing the methods of oppression used to persecute Bahá’ís, and containing specific recommendations on how to block the progress of the Bahá’í communities both inside and outside Iran (Affolter, 2005). The memorandum also publicly introduced the government’s formal agenda regarding Bahá’ís’ access to higher education (as educators and learners).

The Golpaygani Memorandum includes the following opening statement:

[C]oncerning the instructions of the Esteemed Leader which had been conveyed to the Respected President regarding the Bahá'í question, we inform you that, since the respected President and the Head of the Supreme Revolutionary Cultural Council had referred this question to this Council for consideration and study, it was placed on the Council's agenda [for three separate sessions].⁶⁵

Although the phrase “the Bahá'í question” is ambiguous at first, it becomes clear early on as to how the topic was addressed, which parties were involved, and what its underlying meaning is.

Golpaygani mentions, “the recent views and directives given by the Esteemed Leader [a reference to the Supreme Leader Ayatollah Siyyid Ali Hosseini Khamenei]⁶⁶ regarding the Bahá'í question were conveyed to the Supreme Council and that Iranian legislation and policies—some which are undefined or unknown—were considered when discussing “the Bahá'í question”: “In consideration of the contents of the Constitution of the Islamic Republic of Iran, as well as the religious and civil laws and general policies of the country, these matters [regarding the Bahá'í question] were carefully studied and decisions pronounced.” “The Bahá'í question” still has a rather cryptic meaning, but by utilizing the word “question,” while understanding the various considerations that have been raised, it is clear it suggests that the Bahá'í “issue” requires further consideration or discussion, but even so what this issue would be remains unclear up to this point in the memorandum.

⁶⁵ “The Bahá'í question” was included on the agendas for sessions held on July 24, 1987, January 22, 1991, and February 5, 1991, marking a four-year gap after its initial inclusion as a topic of discussion in the ISRCC's sessions (ISRCC, 1991).

⁶⁶ Ayatollah Siyyid Ali Hosseini Khamenei is the second Supreme Leader of Iran since the Islamic Revolution. He has been Supreme Leader since succeeding Ayatollah Ruhollah Khomeini after his death in 1989. Ayatollah Khamenei has the title of “Siyyid,” meaning he has direct patrilineal descent from Muhammad's daughter, Fatimah or Fatimah.

Golpaygani further writes, “In arriving at the decisions and proposing reasonable ways to counter the above question, due consideration was given to the wishes of the Esteemed Leadership of the Islamic Republic of Iran.” In addition to relying on the Constitution and other various state policies and legislation, the role of the Supreme Leader is clearly significant here, implying that the issue or question is extremely important (since the highest ranking representative of the state has also weighed in). Additionally, in this context, to “counter” something means to “speak or act in opposition to” it (OED, 2015b), suggesting that plans regarding how to oppose or challenge Bahá’ís have been consulted upon in ongoing sessions of the ISRCC.

Golpaygani continues, expanding upon the Supreme Leader’s directive “[that] ‘in this regard a specific policy should be devised in such a way that everyone will understand what should or should not be done.’ Consequently, [several] proposals and recommendations resulted from these discussions” (ISRCC, 1991). The proposals and recommendations referred to were shared with the Supreme Leader since “[t]he respected President of the Islamic Republic of Iran, as well as the Head of the Supreme Revolutionary Cultural Council, while approving these recommendations, instructed [the ISRCC to convey them to Ayatollah Khamenei] so that appropriate action may be taken according to his guidance.” Thus, the primary actors—all of whom represent high-ranking positions among the state’s governance structure—behind the drafting and planning of this policy are mentioned in this memorandum, which again indicates the gravity of this matter.

Although the definition of Bahá’í and the reason for needing specific policies regarding this particular group are never explained in the memorandum, the proposals and recommendations make it clear that the underlying foundation of this policy discourse

revolves around the simple idea that such a policy is necessary if a Bahá'í identity exists; and the presence of this identity must bear some numerical significance or burden if a policy that requires such a degree of consideration and participation is required for implementation.

There are three general categories or themes that emerged from the series of discussions on the Bahá'í question: their “general status” under the state’s governance; their educational and cultural status; and their legal and social status. Regarding this general status, “They will not be expelled from the country without reason” (A(1)), “They will not be arrested, imprisoned, or penalized without reason” (A(2)), and “The government’s dealings with them must be in such a way that their progress and development are blocked” (A(3)) (ISRCC, 1991). The pronoun reference of “they” obviously refers to the collective body of Bahá'ís. Specifying that “they” are not to be banned from the country or arrested, jailed, or charged “without reason” understandably means that *with reason*—whatever that reason may be (since it is not indicated here)—they can be banished and/or imprisoned. The third and final point regarding the general status of Bahá'ís, however, is clearly an outlier. As iterated in Golpaygani’s quoted words of Ayatollah Khamenei, the first two instructions focus on what *should not* be done by the state, and the third focuses on what *should be* done. The government’s “dealings with *them* [emphasis added]” should ensure that Bahá'ís do not progress nor develop, foreshadowing their intended extinction. When people or societies do not advance, grow, or develop, they remain stagnant unable to contribute to the advancement and development of the greater society. In other words, they become useless. It may be that being confined to a jail cell or exiled would be preferable to being denied to progress as a human being and as a community.

In the section about the educational and cultural status of Bahá'ís, the memorandum states: “They can be enrolled in schools provided they have not identified themselves as Bahá'ís” (B(1)), and “[p]referably, they should be enrolled in schools which have a strong and imposing religious ideology” (B(2)). First of all, there is a contradiction in these two statements—On the one hand, Bahá'ís are denied access to schools if they self-identify as Bahá'ís, and on the other hand, Bahá'ís should be enrolled in schools that have a strong ideological foundation in Islám (because of their Bahá'í identity). The quality of education is not addressed in the latter point, but rather the type of education is—a “strong and imposing religious ideology” that resounds one of the many acts of colonialism that resulted in forced assimilation and learning of ideological doctrine in schools of the colonized. The schools referenced here must refer to pre-tertiary levels since the next point is specific to higher education. It is further continued that “They must be expelled from universities, either in the admission process or during the course of their studies, once it becomes known that they are Bahá'ís” (B(3)). Denying Bahá'ís access to higher education appears to be systematic plan, as they will be denied at any stage of the higher education process “once it becomes known that they are Bahá'ís,” which suggests the government may have or anticipate procedures in place to indeed make their identities known. So clearly, this recommendation promotes unequal and inequitable access to higher education based on a specific religious minority group identity.

This Bahá'í identity, according to the government, seems to require a cleansing or reformation (i.e., a countering) as in B(4), it is mentioned: “Their political (espionage) activities must be dealt with according to appropriate government laws and policies, and their religious and propaganda activities should be answered by giving them religious and

cultural responses, as well as propaganda.” Political “espionage” committed by the Bahá’ís “must be dealt with” in adherence to government legislation and policy (including this memorandum) in addition to coercing their consumption of “religious and cultural responses,” which are unclear. To distinguish between religion and culture is unique here, especially since the Constitution and Civil Code make it clear that Islamic law is the foundation of all governance throughout the state. Words such as “espionage” brand Bahá’ís as enemies of the state, reinforcing the “traitor” label among many others. In addition to these specific government’s plans of counteraction, the state also requires “Propaganda institutions (such as the Islamic Propaganda Organization) [to] establish an independent section to counter the propaganda and religious activities of the Bahá’ís” (B(5)). To counter “propaganda” with “propaganda” seems rather counterintuitive, and the characteristics, qualities, or descriptions of either forms of propaganda are missing. However, strategy B(6) makes it clear that the purpose of these counter-initiatives regarding the educational and cultural status of Bahá’ís extend far beyond the government’s jurisdiction within the state: “A plan must be devised to confront and destroy their cultural roots outside the country.” Strong contentious words such as “confront and destroy” express that Bahá’ís are a threat to the state regardless of where they live in the world, and therefore, the core of their “cultural” identities must be uprooted and extinguished. These patterns or themes expressed thus far reveal a blueprint for the government’s genocide of Bahá’ís—a genocide in the emblematic sense that aims to exterminate and annihilate the multifaceted identity of the Iranian Bahá’í community.

The government’s mandates regarding the legal and social status of Bahá’ís further expands upon this secret blueprint, but again, they also include some inconsistencies. For

instance, it was mentioned previously that the government wishes to block the progress and development of the Bahá'í community, but C(1) assumes their living status in society is equal to all other Iranians: “Permit them a modest livelihood as is available to the general population,” meaning that they should live according to the minimum standards of quality life as the rest of the “general population.” As long as having basic human rights does not influence “them” to become Bahá'ís, then the government will grant them such rights so that their quality of life is above minimum standards: “To the extent that it does not encourage them to be Bahá'ís, it is permissible to provide them the means for ordinary living in accordance with the general rights given to every Iranian citizen,” including “ration booklets, passports, burial certificates, work permits, etc.” (C(2)). Their basic rights are denied, however in areas of employment within the public sector, as the memorandum states, “Deny them employment if they identify themselves as Bahá'ís” (C(3)), including “any position of influence, such as in the educational sector, etc.” (C(4)). Thus Bahá'í teachers and professors are not permitted to work within the general or higher education sectors if they self-identify as Bahá'ís in order to prevent any “influence” they may have on their students.

Reiterations of “they,” “them,” and “their” clearly refer to the collective identity of Bahá'ís—not their individual identities, as their individual identities are not considered and are most likely irrelevant to this particular policy document. In addition to the usage of evocative, disparaging language, such pronoun references conjure an othering posture, resulting in a dichotomous trend of “us versus them,” the state versus the Bahá'ís. The memorandum is concluded with Golpaygani’s signature, and underneath his signature, in his own handwriting, Supreme Leader Ayatollah Khamenei wrote: “In the Name of God! The

decision of the Supreme Revolutionary Cultural Council seems sufficient. I thank you gentlemen for your attention and efforts,” which was also followed by his signature. Receiving the Supreme Leader’s approval on this policy document indicates that it was passed through the highest channels of Iran’s governance system. Also, Ayatollah Khamenei’s reference to the “attention and efforts” of “gentlemen” further reinforces the superior socio-political status of men and the dominant patriarchal system that dictates the laws of the land.

Letter from the Ministry of Science, Research and Technology to Iranian Universities

During the 2006-2007 academic year, the main tactic employed by the Iranian government to deprive Bahá’ís of access to higher education was through expulsions. Approximately 900 Bahá’í students took the national entrance exam in June 2006, and nearly 56% of them passed and were listed as eligible to apply to university. Only 200 Bahá’í students managed to enroll in universities, but most of them were gradually expelled “over the course of the academic year as their identity as Bahá’ís became known to university officials” (Bahá’í International Community, 2008, p. 39). It soon became clear that those expulsions reflected official government policy, which was confirmed in a confidential letter written in 2006 by the government’s Ministry of Science, Research and Technology (MSRT) instructing 81 universities (both public and private) to expel any student who is discovered to be a Bahá’í. The letter was written and signed by Mr. Asghar Zári’í, a high-ranking official of MSRT.

Similar to the Golpaygani Memorandum, this letter also included the words “Confidential” (but in this instance, it was not written in all capital letters, and it was in bold-face type, still marking the significance of the privileged contents of the letter). The subject

of the letter reads, “Banning of the education of Bahá’ís in universities.” The drafting of the letter is based on the policy measures set in the memorandum. It begins: “in accordance with decree number 1327/M/S, dated 6/12/69 [25 February 1991], issued by the Supreme Revolutionary Cultural Council and the notification of the responsible authorities of the Intelligence [Office],” it continues, “if Bahá’í individuals, at the time of enrolment at university or in the course of their studies, are identified as Bahá’ís, they must be expelled from university,” which again iterates both unequal and inequitable access to higher education to Bahá’ís simply because of their religious minority identities, citing section C(4) of the memorandum. The letter concludes, “Therefore, it is necessary to take measures to prevent the further studies of the aforementioned [individuals] and forward a follow-up report to this Office,” and the list of recipients of the letter—the 81 public and private universities—is provided after Zári’í’s signature. This confidential letter from the Ministry of Science, Research and Technology (MSRT), the branch of government that oversees and administers higher education regulations throughout the state, is an extension of a specific section (C(4)) of the memorandum, and its level of authority and discretion further indicates that like the memorandum, it is also a policy document. The letter is very concise, but its intentions are clear, and like the memorandum, there is no reason provided as to why Bahá’ís are discriminated against aside from discovery of their identities.

New Zealand

New Zealand is a constitutional monarchy with a parliamentary system of government. There is no entrenched law that forms the New Zealand constitution, but it does have an “uncodified constitution.” The uncodified constitution of New Zealand is a combination of laws. According to the New Zealand Constitution Act 1986, the

Constitution of New Zealand is comprised of the following separate legislative measures: Constitution Act 1986; New Zealand Bill of Rights Act 1990; Electoral Act 1993; Treaty of Waitangi; and Standing Orders of the House of Representatives. Only the relevant texts, however, were analyzed for this study and are included in the table above (7.1). Most of the laws—aside from the historical Treaty of Waitangi (1840)—were signed into law in the twentieth century.

Treaty of Waitangi

The Treaty of Waitangi—New Zealand’s founding document—was a written agreement made in 1840 between the British Crown (the monarch) and more than 500 Māori chiefs. After that, New Zealand became a colony of Britain and Māori became British subjects. However, Māori and Europeans had different understandings and expectations of the treaty. Although the writing of the treaty intended to create unity, different understandings of the treaty (including differences between the English and Māori translations), and breaches of it, have caused conflict. From the 1970s, the general public gradually came to know more about the treaty, and efforts to honor the treaty and its principles expanded, but more efforts are necessary on all sides in order to truly honor the Treaty of Waitangi and the rights of Māori (Orange, 2012).

For many years, Māori members of Parliament (MPs) had pressured for the treaty to have statutory recognition, since it had no legal authority unless it was incorporated into New Zealand law. With the aim of improving relationships between the Crown and Māori, the government passed the Treaty of Waitangi Act 1975. Section 2 of the Treaty of Waitangi Act 1975 defines Māori as “a person of the Māori race of New Zealand; and includes any descendant of such a person,” but their association with the land was not included in this

definition in spite of the primary objective of the Treaty of Waitangi Act 1975 being the clarification of discrepancies regarding Māori land rights (and their sovereignty). This Act established the Waitangi Tribunal and catalyzed a radical shift in the role of the treaty in the nation's life and governance. The Waitangi Tribunal was formed as a permanent commission of inquiry to consider claims by Māori that the Crown had breached principles of the treaty. The tribunal could also make recommendations to government on its findings from claim hearings. However, its jurisdiction was initially restricted to hearing claims dating from 1975, and for some years it had very little social and political influence. In 1985 the Tribunal's jurisdiction was extended to cover Crown acts and omissions since the signing of the treaty in 1840. This opened up the nation's historical record of Crown–Māori relationships to intense scrutiny. Further amendments to the Treaty of Waitangi Act expanded the tribunal's membership and extended its capacity for research, hearings and report writing (Orange, 2012).

Although there are no references to educational rights or access in the Treaty of Waitangi, its significance is marked by the evidence of British intentions of colonial rule over Māori and Aotearoa.⁶⁷ Most of the content is specific to land rights and sovereignty of the British Crown and Māori. The Treaty is not too extensive—it is comprised of a preamble and three articles, and it was first drafted in English and then translated into Māori by missionary Henry Williams and his son Edward (Orange, 2012).

The meaning of the English version was not exactly the same as the sociocultural implications of the Māori translation. For instance, in the English version of the Preamble, it is stated that the Crown “invite[s] the confederated and independent Chiefs of New Zealand

⁶⁷ Māori term for New Zealand, most commonly known to mean “long white cloud.”

to concur in the following Articles and Conditions.” In the Māori translation, however, it is stated that the Crown “presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here,” suggesting that the Māori chiefs are not actually “invite[d] . . . to concur,” but rather, they are “present[ed]” with the laws instead (Kawharu, 2004). Article One: the Māori version of the Treaty gave Queen Victoria governance over the land, while the English version gave her sovereignty over the land, which is a stronger term. Article Two: the Māori version guaranteed chiefs “te tino rangatiratanga”—chieftainship over their lands, villages and treasured things. It also gave the Crown a right to deal with Māori in buying land. The English version gave chiefs “exclusive and undisturbed possession” of lands, forests, fisheries and other properties. It also gave the Crown an exclusive right to deal with Māori over buying land. Article Three: both versions gave Māori the queen’s protection and the rights of British subjects. (Kawharu, 2004; Orange, 2012).

New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 (NZBORA) passed into law on August 28, 1990. Just as its name implies, the legislation focuses on the rights of citizens and non-citizens (legal residents or visitors) of New Zealand. There is no specific reference to higher education or general education in the New Zealand Bill of Rights Act 1990, but there are clauses that address the rights of minorities and non-discrimination. In Part 2 (“Civil and political rights”), Section (§) 19 (“Freedom from discrimination”), the following is stated: “Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993” (Subsection 1); and “Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of

discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination” (Subsection 2) (The Human Rights Act 1993 is discussed in the subsequent subsection). Thus § 19(1) refers to “freedom from discrimination,” as dictated in the Human Rights Act 1993,⁶⁸ and therefore, it is not necessarily explained what kind of discrimination one has “freedom from.” However, § 19(2) specifically refers to measures that aim to remedy marginalization and disparities resulting from discrimination. This language suggests an awareness on the part of the authors that discrimination leads to inequality, particularly in the form of rearing the reality of “disadvantaged” persons or groups. Furthermore, the meaning of measures is not explained here (as they are fully addressed in the Human Rights Act 1993), but it is specified that such measures should not be considered as a means of discrimination (i.e., “positive discrimination”).

Section 20 (“Rights of minorities”) states:

A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practice the religion, or to use the language, of that minority.

This section explicitly reveals the government’s recognition of select minority groups, and it solely emphasizes their collective rights (“shall not be denied the right, in community with other members of that minority”)—not their individual rights as well. Referring to “ethnic, religious, or linguistic” minorities suggests that no other minority groups exist in the country.

⁶⁸ When New Zealand’s Human Rights Act 1993 was enacted by parliament, its section on discrimination replaced the language of the New Zealand Bill of Rights Act 1990.

The absence of any reference to indigenous peoples or, more specifically, Māori, implies both their non-existence and non-indigeneity in NZBORA.

Human Rights Act 1993

The Human Rights Act 1993 is a statute enforced into law by the Parliament of New Zealand, which dictates laws regarding discrimination and human rights. It was a consolidation and amendment of the Race Relations Act 1971 and the Human Rights Commission Act 1977. It came into force on 1 February 1994. The Act governs the work of the New Zealand Human Rights Commission and addresses its organization, proceedings, and responsibilities; laws regarding “unlawful discrimination”; membership and obligations of the Human Rights Review Tribunal; penalties for “inciting racial disharmony”; and “miscellaneous provisions” regarding other forms of discrimination (i.e., license and registration, access to and use of facilities, etc.). As referenced in § 19 (Subsection 1), the laws regarding discrimination are laid out in the Human Rights Act 1993. Part 2, § 2, “Prohibited grounds of discrimination,” includes a detailed list of classifications that cannot be discriminated against, including: sex, marital status, religious belief, “ethical belief” (those who “lack” a religious belief), color, race, “ethnic or national origins,” disability, age, political opinion, employment status, family status, and sexual orientation. Indigeneity, however, is not included in this list, but it can be “argued” that it would fall under either the category of “ethnic or national origins” or “race”—even though it is clear that Parliament is aware of the distinction since one of the criteria to be appointed to New Zealand’s Human Rights Commission is “knowledge of, or experience in . . . the Treaty of Waitangi and the rights of indigenous peoples” Part 1, § 11(a).

“Discrimination in access to educational establishments” (Part 2, § 57) is also singled out as a form of prohibited discrimination in Human Rights Act 1993. Section 57 is prefaced with: “It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment, or any person concerned in the management of an educational establishment or in teaching at an educational establishment,” which, due to its broad description, covers all responsible parties— Parliament, the private sector, and other individuals or groups that run or govern educational institutions. This section further states that which is “unlawful” on the part of educational establishments and their authorities or administrative bodies: a) “to refuse or fail to admit a person as a pupil or student”; b) “to admit a person as a pupil or a student on less favorable terms and conditions than would otherwise be made available”; c) “to deny or restrict access to any benefits or services provided by the establishment”; or d) “to exclude a person as a pupil or a student or subject him or her to any other detriment” as according to “any of the prohibited grounds of discrimination” presented in Part 2, § 2. Although higher education institutions are not specifically addressed in this legislation, they fall under the general category of “educational establishments,” which are defined as “establishment[s] offering any form of training or instruction and . . . educational establishment[s] under the control of an organization or association referred to in section 40 [i.e., ‘Vocational training bodies’].”

There are exceptions to acts identified as unlawful discrimination in access to educational establishments, however, as indicated in § 58, titled “Exceptions in relation to establishments for particular groups.” In § 58(1), it is stated that “[a]n educational establishment maintained wholly or principally for students of one sex, race, or religious belief, or for students with a particular disability, or for students in a particular age group” is

not regarded as discrimination in access to an educational institution, particularly if it “refus[es] to admit students of a different sex, race, or religious belief, or students not having that disability or not being in that age group.” Minority-serving institutions (MSIs) or indigenous colleges or universities would also fall under this category of educational establishments, but there is no explanation as to why denying admission to some persons or groups solely on the basis of difference does not constitute an act of unlawful discrimination. Furthermore, it is written:

Nothing in section 57 shall prevent an organization or association from affording persons preferential access to facilities for training that would help to fit them for employment where it appears to that organization or association that those persons are in special need of training by reason of the period for which they have not been engaged in regular full-time employment (§ 58(2)).

It appears that the terms “organization or association” loosely refer to “educational establishments” even though they are not explicitly referenced, especially since this statute is included under the heading “Discrimination in access to educational establishments.” Educational establishments, therefore, are legally permitted to grant “preferential access to facilities for training,” is an example of the law § 19(2) of NZBORA allowing for “Measures taken in good faith” for “disadvantaged” peoples and groups. In this instance, however, “preferential access,” is contingent upon a person or group gaining “regular full-time employment” if they are otherwise unable to do so. Educational establishments, therefore, are associated with employment here and most likely assumed to be centers of vocational training. Therefore, there is no other indication of “preferential access”—what it may look like and how it is carried out—to educational establishments aside from the benefits of

“training” for employment. Nonetheless, “preferential access” or “measures” are implied in § 59, “Exception in relation to courses and counselling,” which permits educational establishments to have and provide special courses or counseling services “restricted to persons of a particular sex, race, ethnic or national origin, or sexual orientation, where highly personal matters, such as sexual matters or the prevention of violence, are involved”—another indication that Parliament is aware of internal and external disparities and that exist for peoples and groups attending educational institutions. Other forms of unlawful discrimination in various spheres and sectors of society, including “education,” are very briefly mentioned in § 62(3)(j) on “Sexual harassment” and § 63(2)(j) on “Racial harassment.”

A much broadly-phrased law on measures for specific persons or groups is § 73(1), “Measures to ensure equality,” which reads: “Anything done or omitted which would otherwise constitute a breach of any of the provisions of this Part” does not qualify as a breach if “it is done or omitted in good faith for the purpose of assisting or advancing persons or groups of persons, being in each case persons against whom discrimination is unlawful by virtue of this Part” (§ 73(1)(a)). Again, the dependency of measures upon “good faith” emerges for “assisting or advancing” peoples and groups who have been marginalized due to discrimination.

Although there are no specific references to quality or standards of education for minorities and indigenous peoples in the Human Rights Act 1993, there are inferences of the intention to improve the level of understanding and enforcement of human rights in general. There are five references to having “better” understanding, protection, compliance, or dealing with human rights standards as laid out in international instruments. Specific to

Māori rights, Part 1 § 5(2)(d)) calls for the Human Rights Commission “to promote by research, education, and discussion a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law.” The level of standards implicitly suggested in this piece of legislation, therefore, are dependent upon international human rights standards, which ironically, defer the definition and level of “minimum” standards to the state.

Education Act 1989

Administered by New Zealand’s Ministry of Education, Education Act 1989 is a comprehensive and extensive piece of legislation specific to all education-related matters in the country. A three-tiered system of primary education, secondary education, and tertiary education⁶⁹ consisting of five categories of institutions, the education system in New Zealand is constantly evolving. The Education Act was last amended in 2013. Although the Education Act 1989 is very broad in scope, for obvious reasons, the analysis in this section is limited to tertiary education and access for Māori. Content on higher education is divided into 11 parts of the Education Act 1989: Part 13 (“General provisions relating to tertiary education”); Part 13A (“Tertiary Education Commission”); Part 14 (“Establishment and disestablishment of tertiary institutions”); Part 15 (“Administration of tertiary institutions”); Part 15A (“Special provisions relating to polytechnics”); Part 16 (“Programs and students”); Part 16A (“Membership of associations of tertiary students”); Part 18⁷⁰ (“Private training establishments”); Part 18A (“International students”); Part 19 (“Vice-Chancellors Committee”); and Part 20 (“New Zealand Qualifications Authority”).

⁶⁹ New Zealand’s legislation and policies use “tertiary education” in lieu of “higher education” to refer to any higher education-related measures.

⁷⁰ Parts 17 and 17A were repealed, but they are still identified as such in the Education Act 1989.

Tertiary level or higher education institutions in New Zealand's Education Act 1989 are collectively referred to as "institutions." Any and all of the five following categories of higher education classify as an institution: college of education, polytechnic, specialist college, university, and wānanga (Part 13 § 159). The New Zealand government classified each of these types of institutions of higher learning because they are assumed to share one or more of the following unique characteristics: 1) "they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence"; 2) "their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge"; 3) "they meet international standards of research and teaching; 4) "they are a repository of knowledge and expertise"; and 5) "they accept a role as critic and conscience of society" (Part 14 § 162(4)(a)(i-v)). These characteristics undoubtedly also reflect expectations of superior quality and standards unmatched in other levels of education and learning discussed in the legislation. In addition to meeting "international standards," these institutions also focus on "more advanced learning" to the extent of achieving "intellectual independence," conveying leadership and innovation in research and knowledge systems. Quality and standards aside, the purpose and functions of higher education institutions are also evident through the explication of such characteristics serving as mutually reinforcing spaces for teaching and learning, sources of knowledge production and sharing, and fostering critical thinking and upholding ethical standards within and beyond institutional walls.

The following five classifications of higher education or tertiary education institutions include:

- College of education: an institution where “teaching and research required for the pre-school, compulsory and post-compulsory sectors of education, and for associated social and educational service roles”;
- Polytechnic: an institution that includes “a wide diversity of continuing education [options], including vocational training, that contributes to the maintenance, advancement, and dissemination of knowledge and expertise and promotes community learning, and by research, particularly applied and technological research, that aids development”;
- Specialist college: an institution that focuses on the “teaching and (if relevant) research of a specialist nature that maintains, enhances, disseminates, and assists in the application of knowledge and expertise”;
- University: Somewhat similar to a polytechnic, it is an institution that includes a “wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of, knowledge, develops intellectual independence, and promotes community learning”; and
- Wānanga: an institution characterized by “teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Māori (Māori tradition) according to tikanga Māori (Māori custom)” ((Part 14 § 162(4)(b)(i-iv))

Colleges of education, therefore, are institutions that train and prepare educators or teachers for various careers in the field of education. Polytechnics or institutes of technology

specifically serve to advance the technology industry through the production of research and knowledge. Specialist colleges focus on specialized fields for professional work opportunities (e.g., medicine, psychiatry, etc.). Universities are similar to polytechnics or institutes of technology, but they include a variety of diverse array of programs and disciplines for study and research that extend beyond the field of technology. Lastly, wānanga are higher education institutions that are framed by Māori indigenous knowledge systems and cultural customs, offering undergraduate and graduate-level courses and programs similar to universities. An alternative form of higher learning that is not stated here, but is offered through one or more of these other types of tertiary education institutions is online or distance learning through Web or Internet-based teaching and study of courses.

The establishment of wānanga indicates that the government is making efforts to implement and accommodate indigenous/Māori identity and culture within the realm of tertiary education. Emphasis on reproducing the physical demographics of local communities within higher education administrations, councils, and boards is also by ensuring that their membership is comprised of “ethnic and socio-economic diversity” of the communities served by the institutions (§ 222AD(1)(b); § 171(4)(a); § 99 (1)(a)(i)). Likewise, this legislation requires “that the council of a designated polytechnic should include Māori” membership (§ 222AD(1)(a)) and that the appointment of members to the Tertiary Education Commission is conditional upon consultation with the Minister of Māori Affairs (§ 159D(1)). Also, the sex ratio in New Zealand is likewise a determining factor in the representation on councils and boards, since on two occasions the legislation mentions (or recalls) “the fact that approximately half the population of New Zealand is male and half the population is female” (§ 171(4)(b); § 99 (1)(a)(ii)).

Aside from the membership composition of administrative bodies within the tertiary education system, specific statutes addressing access to higher education for minorities or indigenous peoples or marginalized communities and other admissions criteria are also addressed. Admission to tertiary education institutions in New Zealand is termed as “enrollment” in the legislation. Eligibility for enrollment is contingent upon “if, and only if” students meet the following criteria: “is a domestic student” or the institution’s council “consents”; “the person holds the minimum entry requirements for the program or scheme as determined by the council”; and if the person meets the minimum age requirement set by an institution at the institutional, program, or schematic level (§ 224(2)(a-c)). Exceptions are made for students 20 years of age and older and for international students if they meet all the necessary requirements for admission per the approval of New Zealand’s Qualification Authority (NZQA). NZQA’s administrative scope is limited to the secondary and tertiary education sectors in New Zealand, by administering the National Certificates of Educational Achievement (NCEAs) for secondary school students and upholding quality assurance of “non-university tertiary training providers” (NZQA, 2014). Admissions measures for some students is indicated in § 224(6):

the council [of each tertiary institution] may, in the selection of the students to be enrolled, give preference to eligible persons who are included in a class of persons that is under-represented among the students undertaking the program or training scheme.

The admissions for “under-represented” students, however, seems to refer to a numerical minority that is disproportionally represented in the enrollment of a particular program or discipline of study. So by “under-represented,” it may imply admission based on one or

more social identity markers—ethnicity or race, sex or gender, disability, citizenship, indigeneity, religion, socioeconomic status, for example, but this clause is an indication of equitable measures regarding access. Nonetheless, this measure is similar to that of “preferential access” mentioned in the Human Rights Act 1993 and “[m]easures taken in good faith” to help advance and/or assist the progress of disadvantaged persons and groups in spheres or sectors of society in which it would be deemed necessary to do so.

Additionally, there are sections of the Education Act 1989 that underscore the need to foster and progress the education of minority and indigenous populations through other means than equitable access measures. For example, New Zealand’s “Tertiary Education Strategy” (Part 13 § 159AA), also known as TES, highlights the need to advance the status of Māori students within higher education. According to the TES, “[t]he Minister [of Education] must, from time to time, issue a tertiary education strategy that sets out” (§ 159AA(1)) three government strategies—“long-term strategic direction” (§ 159AA(1)(a)) and “current and medium-term priorities” for tertiary education (§ 159AA(1)(b)). The government’s long-term strategic plan for tertiary education must include the following: “economic goals”; “social goals”; “environmental goals”; and the “development aspirations of Maori and other population groups” (§ 159AA(2)(a-d)). While it is rather significant that enhancing Māori “aspirations” is one of the primary objectives—alongside economic, social, and environmental goals, all of which are equally relevant to Māori and non-Māori communities living in both rural and urban parts of the country—of the long-term Tertiary Education Strategy, two understandings come to mind: 1) “Māori and other population

groups” represent non-dominant groups in New Zealand, but the latter⁷¹ is not significant enough (be it numerically or proportionally) to mention, so they are considered as miscellaneous, as “Other,” representing the numeric, economic, social, civil minority (Even grouping Māori with “other population groups” suggests the “othering” of Māori as well.); and therefore, 2) their “development” is unequal to non-Māori “and other population groups.” Due to these factors, the government has identified the need to offer measures for these respective groups.

More guidelines on equitable access measures and quality in terms of the expectations of higher education for Māori and all other New Zealanders is presented in § 159AAA(1)(a-f), stating that tertiary education institutions and systems should: foster the “efficient use of national resources, high quality learning and research outcomes, equity of access, and innovation”; contribute “to the development of cultural and intellectual life in New Zealand”; respond “to the needs of learners, stakeholders, and the nation, in order to foster a skilled and knowledgeable population over time”; contribute “to the sustainable economic and social development of the nation”; strengthen “New Zealand’s knowledge base and [enhance] the contribution of New Zealand’s research capabilities to national economic development, innovation, international competitiveness, and the attainment of social and environmental goals”; and provide “for a diversity of teaching and research that fosters, throughout the system, the achievement of international standards of learning and,

⁷¹ The meaning of “other population groups” may evolve over time depending on the demographic landscape of the country, but today, it most likely includes—but is not limited to—Pasifika, a term used to describe Pacific Island migrants to New Zealand from Sāmoa, Tonga, the Cook Islands, Niue, Tokelau, Tuvalu, and other, smaller nations, states, and territories of the Pacific. Most of these states were previously governed by New Zealand, and some of them (e.g., Niue and the Cook Islands) retain close administrative ties with New Zealand in spite of gaining independence. Tokelau, however, remains a dependent territory of New Zealand.

as relevant, scholarship.” To some degree, there is some repetition and redundancy that yields a theme of sustainability—of knowledge, the economy, livelihoods, and the environment as mutually reinforcing for the state. Sustainability is dependent upon the role of higher education institutions as sources of knowledge production and dissemination through exemplary research and scholarship, particularly for the purposes of knowledge sharing, international competition, and innovation (which is mentioned twice). This reference to “high quality learning and research outcomes,” paralleled with “the achievement of international standards reveals this high standard that the government sets for itself, especially in conveying a desire to rank internationally. Embracing diversity within tertiary education is manifested in two ways—through advancing “cultural and intellectual life” and methods of teaching and research. All in all, these sound like notable attributes of tertiary education as a whole, but these anticipated components of tertiary education are saturated by the motivations for social and economic development on an international scale. The contribution of research in achieving “national economic development,” the retention of a “skilled and knowledgeable population,” and “international competitiveness,” for example outweigh the benefits of diversity, equal and equitable access, and quality of higher education for non-material means.

Tertiary Education Strategy 2014 - 2019

The Tertiary Education Strategy (TES), as mentioned in the preceding section, was introduced in the Education Act 1989. Drafted and published by the Ministry of Education and the Ministry of Business, Innovation and Employment, TES includes an extensive scope and vision of tertiary education consisting of the five “institutions” or “tertiary education organizations” (TEOs) throughout New Zealand (Ministry of Education & Ministry of

Business, Innovation and Employment, 2014). However, the government's goals for the current TES are predominantly motivated by the production of human capital to compete in a global market—a concept that was just alluded to in the previous sub-section regarding the roles and responsibilities of higher education in the Education Act 1989. The current Tertiary Education Strategy 2014 - 2019 (TES 2014-2019) follows its inaugural predecessor TES 2010 - 2015; and it “has been designed,” according to Steven Joyce, New Zealand's Minister for Tertiary Education, Skills and Employment,⁷² “to guide tertiary education and its users (learners and businesses) towards a more prominent contribution to a more productive and competitive New Zealand” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 2). The word “market,” referring to the economic or labor market, is mentioned on 13 separate occasions throughout TES 2014 - 2019; and the words “competition” and “competitive” or “competitiveness,” specifically denoting competition in the “global” or international economy or market, are stated six, seven, and two times, respectively. Furthermore, the overall state of tertiary education in New Zealand is signified by an upward-moving trend characterized by results such as: achieving “high levels” of participation and attainment; significant improvements and rewarding results in the economic performance and value of the tertiary education system; higher qualification and graduation rates; and an increase in enrollments among Māori and Pasifika students (Ministry of Education and the Ministry of Business, Innovation and Employment, 2014). These results, and the statistics provided to support them in TES 2014-2019, however, are

⁷² New Zealand's Minister for Tertiary Education, Skills and Employment is part of the Ministry of Education's portfolio and receives advisement from the Ministry of Business, Innovation and Employment (i.e., there is no Ministry of Tertiary Education, Skills and Employment).

national averages that mask the number of micro-level challenges and inadequacies that are unaccounted for within and across New Zealand's TEOs. The language and content of TES 2014 - 2019 suggests that its target audience is the "international competition" cited throughout many sections of the legislation.

Even discourse on "access" in TES 2014-2019 is dominated by references to international competition or the labor market. Nearly 67% of references to tertiary education access are directly related to employers accessing skilled, qualified workers or students and their acquisition of skills in order to secure employment. Only on one occasion, access to "high quality, internationally recognized teaching staff" is mentioned (Ministry of Education, 2014, p. 18), but this is also within the context of establishing international relationships with New Zealand tertiary education institutions so the state can become a global competitor. Nonetheless, the tertiary system-wide improvements the government is focusing on address both access and quality in more general terms. The three areas of system-wide improvement the government include: access by "maintaining existing participation levels and improving them, particularly for some groups"; achievement by improving the rate of qualification attainment, the numbers of people progressing to further study, and the quality of provision by TEOs"; and outcomes by "ensuring that more people benefit from tertiary education and improve their economic, social and cultural outcomes" (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 8).

Although adorned with language and content that resound motivations of competition in the global economy, TES 2014-2019 includes six strategic priorities that target areas of improvement within tertiary education that are directly or indirectly associated with international economic standings: 1) development of skills for industry; 2) career access

and options for “at-risk people”; 3) improving academic achievement for Māori and Pasifika; 4) improving literacy and numeracy among adults; 5) “strengthening research-based institutions”; and 6) strengthening international relationships and “linkages” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 8). Through these six strategic priorities, the government’s aim in implementing TES 2014-2019 is to achieve economic, environmental, and social outcomes (per § 159AA(2)(a-c) of the Education Act 1989) through tertiary education. In identifying these outcomes, the government established analogous strategic tertiary education outcomes for Māori through Priority 3 (titled “Boosting Achievement of Māori and Pasifika”) (as mandated in § 159AA(2)(d) of the Education Act 1989). In the introduction to these strategies, it reads,

In recognizing the role of Māori as tangata whenua [Māori term for indigenous peoples of New Zealand, literally meaning “people of the land”] and Crown partners under the Treaty of Waitangi, TEOs must enable Māori to achieve education success as Māori, including by protecting Māori language and culture, and to prepare for labor market success (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 7).

Reference to the historic Treaty of Waitangi, despite its contentious points, conveys a mutual understanding and reconciliation that must occur between “colonizer” (British) and “colonized” (Māori) in advancing the progress of Māori in their educational endeavors for their individual, collective identities. Language and culture comprise key components of Māori identity. Furthermore, These “Māori cultural outcomes—such as greater knowledge and use of Māori language and tikanga Māori, and development of mātauranga Māori”—are strengthened through tertiary education, especially since “TEOs have a responsibility to

contribute to the survival and wellbeing of Māori as a people” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 7). Although, Māori access to tertiary education is not excluded from the government’s overall goal of “labor market success,” there are parts of the legislation that do suggest the target audience is not limited to national and international market stakeholders alone.

TES 2014-2019 is the first of New Zealand’s policies or legislative measures analyzed here that integrates Māori language throughout the text. Since no English translation is provided when Māori language is included, it appears that the government may assume that the reader of the policy has some familiarity or knowledge of indigenous Māori language and/or culture. Traditionally, policies or legislation that target Māori integrate Māori language that refers to precolonial concepts of collective cultural and social identity such as *tangata whenua* mentioned above. Other terms such as *iwi* or “tribe,” hapū, which are divisions or sub-tribes of iwi comprised of groups based on genealogical descent or *whānau* (extended families), *tikanga Māori*, which encompasses all customs and protocols of Māori culture, *mātauranga Māori*, which is often used synonymously with wisdom, and lastly, *te reo*, meaning “the language” (i.e., Māori language) are used in TES 2014-2019. Māori-specific policies and strategies established by the Ministry of Education are also identified by Māori language titles, including: “Ka Hikitia - Accelerating Success 2013-2017,” the Ministry of Education’s Māori education strategy; “Tau Mai Te Reo,” the Ministry of Education’s Māori language in education strategy; and “He Kai Kei Aku Ringa,” the Māori Economic Development Strategy & Action Plan, which underlines a need to improve economic outcomes for Māori and for New Zealand as a whole through stronger education and workforce connections (Ministry of Education & Ministry of Business, Innovation and Employment, 2014).

Integrating Māori language and words that have historical meanings preserving Māori identity and culture prior to British colonization reveals—on the part of the government—an attempt to acknowledge and address the need for appreciation, preservation and reconciliation of relationships with Māori and tikanga Māori.

In 2001, in preparation for its subsequent drafting of TES, the New Zealand government turned to identifying key strategies for improving the quality of Māori participation in tertiary education by establishing the Māori Tertiary Reference Group (MTRG), a sector-based group of advisors equipped to inform the Māori government about “Māori tertiary issues,” particularly through its drafting of a Māori Tertiary Education Framework,⁷³ what the Ministry of Education calls an “ongoing development” that include “evolving iterations . . . [that] will continue to inform updates of the TES and Statements of Tertiary Education Priorities and will inform wider policy development within the tertiary education sector” (MTRG, 2003, p. 38). In spite of its 14 years of “ongoing development,” however, the Māori Tertiary Education Framework has yet to be formally adopted by the government as a form of supplemental tertiary education legislation, and it is unclear why, but it may have something to do with the Māori Tertiary Education Framework being

⁷³ The work of MTRG helped shape the objectives of TES for Māori in tertiary education. At the behest of the Ministry of Education, MTRG assisted with the consultation and drawing together of the views of Māori communities for the development of TES 2002-2007. This work included the facilitation of 15 consultation *hui* (meetings) throughout New Zealand, as well as the collation of written submissions and anecdotal feedback. Following these hui, and augmenting this feedback with information from the Hui Taumata Mātauranga and the iwi education partnerships with the Ministry, the MTRG outlined the key themes shared by the Māori communities in a Draft Māori Tertiary Education framework. This framework extensively informed TES and in particular, strategies on Māori development. So not only was the policy strategy addressing inclusion of Māori-specific relevance in higher education written, but the process to include such content and context was also inclusive of Māori members of the community and stakeholders.

framed by a Māori knowledge system approach to tertiary education.⁷⁴ For instance, one key Māori concept that is missing from TES 2014-2019, which is proposed in the Māori Tertiary Education Framework, is *kaupapa Māori*—based on a number of key principles (self-determination, cultural aspiration, culturally-preferred pedagogy, socioeconomic mediation, extended family structure, collective philosophy, Treaty of Waitangi, and growing respectful relationships). The absence of traditional Māori knowledge or kaupapa Māori from TES 2014-2019 suggests that there are limits to what measures the government is willing to implement in order to improve Māori achievement in and quality of tertiary education through applying authentic indigenous frameworks. Rather the emphasis on and justification for improving Māori performance in tertiary education seems to be inherently linked to the dominant theme of the global economy that flows throughout TES 2014-2019. Tertiary education in areas such as Māori language and culture, “particularly in wānanga, plays an important role not only in improving individual achievement of Māori” (as prescribed in Priority 3), but also helping to sustain and revitalize Māori language, and progress mātauranga Māori research” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 21). The Ministries (2014) continue further to convey that concentrating in these areas also “helps to sustain Māori culture and delivers economic value to New Zealand” (p. 21). So the cultural preservation and knowledge advancement of Māori, fostered by their participation in tertiary education, is likewise monetized. Although, there is no doubt that successful achievement in higher education results in economic returns, the

⁷⁴ The Maori Tertiary Education Framework is guided by five principles: *whakanni* (respect and inclusiveness); *toi te mana* (influence and empowerment); *ngā kawenga* (responsibility); *ahu kāwanatanga* (contribution and partnership); and *tino rangatiratanga* (authority and self-determination) and seven priorities: lifelong learning pathways; kaupapa Māori provision; learning environments; advancement of whānau, hapū and iwi; Māori-centred knowledge creation; Māori leadership; and Māori as sustainable wealth creators (MTRG, 2003).

social, moral, cultural benefits are even more significant, especially for significantly marginalized populations such as the Māori. In instances such as these, Māori education is presented as a separate, distinct entity from overall education. There is “Māori education,” and then there is “tertiary education,” as if the two cannot be integrated as one, but suddenly, this image of two separate, unequal educational paths instantly vanishes when shadowed by a statement such as: “TEOs will be contributing to the achievement of this strategy when they work in partnership with Māori and iwi to: provide culturally relevant teaching and learning” and “contribute to the growth of mātauranga Māori research” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 21). Collaboration between TEOs and iwi reflects a partnership that coalesces parliamentary and Māori efforts towards one common goal.

Regardless, the intentions of government interests in Māori access and achievement in tertiary education do not appear to be transparent enough, especially since Ministries estimate that “[b]y 2030 30% of New Zealanders will be Māori or Pasifika, and as such it is essential that tertiary education improves its delivery to these groups” (Ministry of Education & Ministry of Business, Innovation and Employment, 2014, p. 12) most likely to further advance the state’s competitiveness internationally. Overall, in TES 2014-2019, the government employs a surface-level discussion of expectations and plans for Māori-specific tertiary education. In spite of dedicating one of the strategic priorities (Priority 3) to Māori and Pasifika advancement, there are no indications of how equality and equity will be accounted for in their tertiary educational strategies. While quality and goals of improvement of tertiary education are addressed quite broadly, the discrepancy in quality for Māori and Pasifika are not acknowledged. In spite of this setback, the government is making efforts

through concurrent strategies to advance Māori education across all levels of formal schooling that are exclusive to Māori students.

Ka Hikitia - Accelerating Success 2013-2017

As indicated in § 159AA(2)(a-d) of the Education Act 1989, the Tertiary Education Strategy was to focus on short-term, mid-term, and long-term goals for improving overall higher education in the state. The long-term goals are to focus on economic, environmental, and social outcomes, as well as the advancement of Māori “and other groups.” Known as “The Māori Education Strategy,” Ka Hikitia - Accelerating Success 2013–2017 (Ka Hikitia) is an ongoing education strategy across all levels (first implemented from 2008 to 2012) aiming to improve the quality of education for Māori students. According to the Ministry of Education (2013), Ka Hikitia was implemented in order “to rapidly change how education performs so that all Māori students gain the skills, qualifications and knowledge they need to succeed and to be proud in knowing who they are as Māori”(p. 9). The strategy is characterized by an integration of legislation (Treaty of Waitangi, Education Act 1989, TES 2014-2019), indigenous ways of knowing (tikanga Māori, mātauranga Māori), and contemporary theoretical approaches that reinforce the importance and value of cultural and identity preservation. Like in TES 2014-2019, the government incorporates many statistics about the success of Ka Hikitia strategy’s implementation thus far, as well as Māori language into Ka Hikitia’s content, but the language usage is far more extensive and deeply connected to cultural contexts than the references in TES 2014-2019 (which is understandable given that Ka Hikitia’s focus is on Māori education). In addition to various education sectors and professionals, institutions, and educators, Ka Hikitia equally identifies students, parents,

families, iwi, hāpu, whānau, and Māori organizations as stakeholders that play a vital role in supporting the successful education of Māori.

Ka Hikitia has five guiding principles for Māori education: 1) Treaty of Waitangi: expressing how the principles of the Treaty are applied in education, particularly, the “rights and duties that stem from the principles of the Treaty [that ensure] the position of Māori is considered fairly when developing policies and funding” (Ministry of Education, 2013, p. 14); 2) Māori potential approach: the belief that all Māori students have the “potential to make a valuable social, cultural and economic contribution to the well-being” of their whānau, hapū, iwi, community, and to the overall state of New Zealand (Ministry of Education, 2013, p. 15); 3) Ako—a two-way teaching and learning process: focuses on the notion that quality teaching and effective teaching and learning result in a reciprocal learner-centered approach in which the teacher is also learning from the student, as if adopting a humble posture of learning; 4) Identity language and culture count: There is a strong link between well-being and achievement. Students’ well-being is strongly influenced by a clear sense of identity, and access and exposure to their own language and culture. Students do better in education when what and how they learn reflects and positively reinforces where they come from, what they value and what they already know. Learning needs to connect with students’ existing knowledge. Identity, language and culture are an asset and a foundation of knowledge on which to build and celebrate learning and success; and 5) “Productive partnerships”: “two-way relationships” contribute to the generation of shared action, knowledge, outcomes, and solutions. Partnerships between the Ministry of Education, Education Review Office (ERO), and education councils, boards, and agencies and iwi, Māori organizations, parents, whenau, hapu, and communities are necessary to

influence relevant education outcomes for Māori students. Such partnerships require acknowledgement and respect for the value of Māori identity, language, and culture, and Māori aspirations for culture, society, economy, and the environment (Ministry of Education, 2013).

In response to TES, one of Ka Hikitia's areas of concentration is tertiary education. According to the strategy, the government is working to: "ensure that tertiary providers have the right incentives to get better outcomes for their Māori students" and "increase the accountability of tertiary providers to their communities and to the Government" (Ministry of Education, 2013, p. 45). There are four tertiary-level goals set for Ka Hikitia's education strategy: 1) "Māori participate and achieve at all levels at least on a par with other students in tertiary education"; 2) "Māori attain the knowledge, skills and qualifications that enable them to participate and achieve at all levels of the workforce"; 3) "Grow research and development of mātauranga Māori across the tertiary sector"; and 4) "increase participation and completion in Māori language courses at higher levels, in particular to improve the quality of Māori language teaching and provision" (Ministry of Education, 2013, p. 44). Ka Hikitia's Māori language education strategy mentioned earlier—Tau Mai Te Reo 2013-2017—is a comprehensive Māori language program that "focuses on the opportunities to strengthen existing investment in Māori language in education" (Ministry of Education, 2013a), but information regarding how the language strategy is implemented at the tertiary level is blurred.

National Definitions and Implications of “Equal” and “Equitable” Access to “Quality” Higher Education for Indigenous Peoples and Minorities

As in international human rights discourses, understandings and interpretations of equal and equitable access to tertiary education and the quality of such education vary across national-level discourses (laws, policies, and strategies), particularly in regards to minorities and indigenous peoples. However, some overlaps and similar concepts addressing these topics are also shared between the two levels of discourses, (more on this will be discussed in the following and final chapter of the dissertation—chapter 8).

Indigenous Peoples and Minorities

The governments of Brazil, Islamic Republic of Iran, and New Zealand, respectively, manifest, to varying degrees, that they have some level of understanding and misunderstanding of the identities of indigenous peoples and/or minority groups who reside within their respective countries and that they are entitled to rights. Their exemplified understanding of these disadvantaged groups and their equal rights, as laid down in their respective national policies, also reflect glimpses into the ideological frameworks of these government systems as well as the cultural, social, political climates each of these marginalized populations are immersed within—something that is not considered nor accounted for in international human rights law regarding the definitions of indigenous peoples and minorities and for good reason due to its need to be adequately broad and general in scope in order to ensure equality, equity, and inclusivity in spite of the magnitude of diversity of cases within and across various parts of the globe.

Brazil’s Constitution, for instance, reveals the government’s acknowledgement of the existence and rights of indigenous populations, devoting a chapter to the population (even

though it is strictly limited to land rights), and it also briefly groups Afro-Brazilians, along with indigenous peoples and “other groups,” which appears to be rather vague and is also “othering” to some degree. Although indigenous peoples hold a unique status, rights, and relationship with the land that should be fully acknowledged and honored by the government, the unique social, economic, and political history of Afro-descendants and the institution of slavery in Brazil appears muted in how Afro-descendants are currently recognized in current legislation. The same clustering of “disadvantaged groups” occurs in Lei de Cotas, where low-income, indigenous peoples, Afro-descendants, and people of mixed race are given special consideration. While it may reflect the intersectionality among these various socially-constructed, classifications, or categories, this “clustering” of identities reinforces the concept of “the Other.” The Constitution does, after all, include language that encourages the pluralism of the state to some degree, through the promotion of cultural traditions and mandating various days devoted to the awareness of the country’s various ethnic and racial groups, for example. The Constitution, LDB, and PNE also uphold that the history and contributions of Afro-descendants and indigenous peoples must also be taught in all elementary education schools. Also, both LDB and PNE included clauses that aimed to promote “ethnic-racial diversity” and end “ethnic-racial inequalities.” As mentioned earlier, indigenous peoples are mostly identified in relation to their association with the land, which is also most likely why there is much greater emphasis on indigenous-specific statutes in the Constitution, LDB, and PNE, in particular (and the government’s attitude towards international human rights law). Recognition of quilombolas or Maroons—most likely comprising one of the “other groups” is also highlighted in education-specific legislation and policies. Lei de Cotas also addresses the intersectional marginalization of Brazilians who *self-*

identify themselves as peoples of African, mixed race, and/or indigenous descent who come from household incomes either equivalent to or below half the minimum wage or poverty line.

As in the case of Brazil's government, the Iranian government does not *define* (but only lists) any of its minorities or indigenous populations. The Iranian government does not make any reference to indigenous peoples (only "tribal" peoples, which is ambiguous and almost "savage-izing") in any of its legislation or policies, suggesting indigenous peoples do not exist and are, therefore, not recognized by the state. However, in its Constitution, the government does broadly address the rights of (unnamed) ethnic and tribal peoples. Then the recognition and rights of three identified religious minorities (Zoroastrian, Jewish, and Christian) are also included, exposing the state's selective classification of religious minority groups based on its interpretation of Islamic law. Iran's governance system is unique among the three countries discussed here, particularly since its structure and protocols, including the drafting and implementation of legislation and policies, are systemically framed by an interpretation of Islamic law and must be approved by the highest ranking official—the Supreme Leader Ayatollah Khamenei. It is through its implementation of Islamic traditions and principles that the state justifies its refusal to acknowledge and ensure the equal rights of one its many religious minorities—Bahá'ís. Even the rights of the religious minorities that *are* recognized are determined by the government's understanding of Islamic law. Also, patriarchal tone of the legislation, chiefly of the Constitution and Civil Code, situates the role of women in an inferior status to that of men within overlapping economic, political, religious, and social spheres of society. Naturally, therefore, the status of women, particularly those among minority or other marginalized groups are perceived to be at a far greater

disadvantage than Shi'a Muslim women. Regarding its understanding and recognition of its indigenous and minority populations, the New Zealand Parliament's perception and attitude towards the Māori population is very much integrated into much of its contemporary measures, particularly since its oldest piece of legislation (under British rule) dating back to 1840 was intended to serve as a contract agreement between the British Crown and the newly colonized Māori chiefs. More than 130 years later, the Treaty of Waitangi Act 1975 was introduced to remedy the discrepancies and inconsistencies of the Māori and English versions of the treaty, to revisit honoring Māori land rights and the Treaty of Waitangi. In 1987, when the Māori Language Act was passed, te reo Māori became an official language of the state of New Zealand (even though from pre-1840 to the 1850s, Māori was the dominant language in Aotearoa), and Māori diction and terminology reemerged, surfacing in contemporary legislation and policy processes, from planning and drafting, to implementation. Interestingly, however, although the government does recognize its Māori population, it does not refer to the Māori as "indigenous," but rather, as a "race," as indicated in the Treaty of Waitangi Act 1975. Thus, there is no reference to indigenous peoples in the state's constitutional documents and other related legislation. Only the Māori Tertiary Education Framework—developed by the MTRG, a team of Māori experts and professionals—for the Ministry of Education included references to indigenous peoples. Thus, by avoiding discourses on Māori indigeneity (in writing), the state conveys that discourses surrounding Māori land ownership, sovereignty, and their history as the original inhabitants and stewards of the land, challenge the legitimacy of British colonization, and, therefore, are preferably avoidable by omission (thus shying away from international human rights-related discourses). As discussed, however, contemporary government strategies that

specifically target Māori are framed by Māori traditions and ways of knowing (without referencing indigeneity or indigenous knowledge). In the New Zealand Bill of Rights Act 1990, minorities are classified according to three of the four categories commonly present in international discourses—ethnic, linguistic, or religious (national minorities are not mentioned), and Māori are also addressed separately since the colonial “agreement” with the British in the Treaty of Waitangi of 1840 to their rights to self-determination, self-preservation, and self-identification are recognized in the Bill of Rights Act 1990, where explicit language from international human rights instruments including “measures” taken for assisting disadvantaged groups and the Human Rights Act 1993 that calls for disadvantaged groups to be able to establish their own institutions and have agency over their own development. The Tertiary Education Strategy (TES) 2014 - 2019 is the first legislative measure that briefly mentions Pasifika by name, grouping them with Māori (indicating shared experiences in marginalization between the two groups), but the distinct status of Māori in New Zealand is visible in most of the state’s laws, policies, and strategies. Broader, and perhaps more inclusive references to New Zealand’s diversity are introduced, as mention of “disadvantaged groups” surfaces in the Bill of Rights Act 1990 and the Human Rights Act 1993, for example. States selectively (and sometimes, broadly) acknowledge and recognize the identities and rights of their indigenous and/or minority populations, but not one of the three governments actually defines these populations in any of their respective measures, and perhaps the complexity of socially-constructed identities and the history of colonialism that has influenced the shift in individual and group identity at the national and group levels has made it challenging for states to fully address identity

beyond generalized terminology such as “culture,” “language” or “mother tongue,” and “traditions” or “customs.”

Higher Education

Whether it is referred to as postsecondary, tertiary, or higher education, or even university or college, how states understand and conceive of higher education systems is highly relevant to the laws and policies that address access for minorities and indigenous peoples. Brazil’s legislation addresses higher education to varying degrees, which is determined by the nature of the legal measure in question. For instance, higher education is addressed more broadly and concisely in the Constitution, while primary and secondary education are far more extensively described. The higher education system in Brazil, as in many countries around the world, is separated into categories—technical or vocational schools, universities and colleges, and professional schools. The Constitution does indicate that the role of higher education (i.e., universities) is to facilitate “moral, academic, and administrative affairs.” The advancement of science and technology, research, and academic and professional networks is also of key importance within the realm of higher education, as indicated in LDB and PNE. Lei de Cotas does not necessarily address the role or significance of higher education, but more so its expansion and access (which will be discussed further in the following section). PNE also highlights the socioeconomic benefits of higher education and its capacity in fostering and maintaining international relationships to help advance the arts and sciences, particularly through technological innovations. Both LDB and PNE also underline the link between higher education and securing employment as an opportunity to contribute to the national and global economy. Iran’s higher education classification is much broader since in the country’s legislation, the terms “higher education”

and “universities” are used interchangeably in spite of the country having four-year universities and two-year colleges, as well as technical colleges. Iran’s Constitution includes minimal references to higher education, but those that are mentioned emphasize the need for free higher education and the expansion of higher education “facilities,” as well as achieving self-sufficiency (of resources) within the state. The Civil Code fails to include any reference to higher education, and statements on general or moral education are limited to targeting children. Administration and oversight of higher education in Iran is split across a number of governmental ministries—the Ministry of Science, Research and Technology⁷⁵ (MSRT) (non-medical sciences and arts), the Ministry of Health and Medical Education (MHME), and the Ministry of Education (teacher and educational training). Consequently, it was challenging to identify and locate centralized legislation for the role and purpose of higher education in the state. Regardless of such decentralization of such higher education-related laws and policies, it is surprising that more details on higher education were not mentioned, especially given the state’s extraordinary regard for higher education traditionally and culturally. The ISRCC’s confidential memorandum and MSRT’s confidential letter to the universities of Iran, therefore, are the closest indication of how valuable higher education is—to the extent that an unrecognized minority population is barred from accessing all universities in the country. Thus, it could be argued that the Iranian government does believe higher education contributes at least to the “progress and development” of those directly benefitting from it. Ironically, the state’s regard for higher education is evident through its policies of depriving its Bahá’í minority to benefit therefrom. New Zealand’s parliamentary

⁷⁵ The Ministry of Research, Science and Technology (MSRT) replaced the former Ministry of Culture and Higher Education (MCHE) in the early 2000s.

system classifies and defines its higher education system as “tertiary education,” comprising colleges of education, polytechnic institutes or colleges, specialist colleges, universities, and wānanga, as introduced in the state’s comprehensive education law, the Education Act 1989. The state’s Education Act 1989 contains the most thorough higher education-specific legislation in New Zealand. The Treaty of Waitangi, Bill of Rights 1990, and the Human Rights Act 1993 do not include any references to tertiary education specifically, even though the Human Rights Act 1993 does have statutes regarding rights in “educational establishments.” TES 2014-2019 is an educational strategy developed per a mandate of Education Act 1989, but its focus on tertiary education deviates from the broader scope of higher education in the state. The strategy is overpowered and motivated by a need to translate success at the tertiary level to mean that New Zealand becomes a fierce competitor in the global labor market. Most of the purported reasoning and benefits surrounding tertiary education are directly associated with increasing the quality and rate of employment within the state. The inclusion of sporadic statistics marking improvement in various segments of higher education further reinforced this neoliberal agenda. Ka Hikitia’s strategy, although relevant to all levels of education, did include a focus area on tertiary education, but it includes various statistics on educational improvement and promotes educational strategies that align more with the target areas of TES 2014-2019. Thus, Ka Hikitia reinforces this notion of increasing enrollment and completion rates at the tertiary level in order to increase the number of students entering the workforce. The only major difference between Ka Hikitia and TES 2014-2019—in regards to tertiary education—is that the former strategy targets the Māori population, and the latter is more general. The source of TES 2014-2019, the Education Act 1989 includes a detailed description of the role and benefits of tertiary

education (i.e., promoting environmental and academic sustainability, ensuring equity of access, heightening individual and community consciousness, etc.), and contributing to the workforce is only one of the many qualities listed, but it was not the only nor the dominant one.

Unsurprisingly, the extent of legislation and policies that mentioned or highlighted higher education in the states were dominated by discourses on public higher education rather than privatized higher education institutions, giving way to greater autonomy in purpose, planning, and delivery of higher education for private providers. Iran's Constitution implied that expanding free higher education systems would naturally negate the need for private higher education institutions. The Brazilian government emphasized public higher education through most of its legislation, including the Constitution, LDB, PNE, and Lei de Cotas. Brazil and New Zealand focused on the many opportunities and outcomes of higher education, but the legislation of the latter was dominated by neoliberal discourses on human capital and the desire to achieve high status within the global market, whereas Brazil's legislation focused on cultural, economic, and social benefits of higher education.

Equal and Equitable Access to Higher Education

Laws and policies of the three states discussed in this chapter manifest both varying and similar interpretations of what equal and equitable access to higher education means and how it is envisioned. In its constitution, the Brazilian government briefly explains that higher education is accessible to all on the basis of "individual capacity," but as noted on a few occasions, individual capacity does not guarantee equal access to higher education. If anything, it assumes that attainment of a certain degree of merit is attainable for all, and therefore, access to higher education is dependent upon a standard of merit. Brazil's

Constitution does not address education-specific measures for its indigenous or minority populations, but there is specific reference to “Brazilian cultural heritage” and the need for the identity of such populations to be celebrated, fostered, and promoted through the arts, sciences, technology, buildings, artifacts, creation, edifices, natural landmarks, and the like, which can fit very well into a higher education context in terms of curricula, pedagogy, organization and structure, and access. How disadvantaged groups (i.e., indigenous peoples, Afro-descendants, quilombolas, persons with low-income, etc.) are served and benefitted by promoting such heritage must be accounted for as well; they should not be “watching from the sidelines” as others are honoring and celebrating their contributions to Brazilian society. This is where LDB, Lei de Cotas, and PNE expand beyond the scope of the Constitution. In LDB, admission to higher education is suggested to be determined by each higher education institution respectively, but that systemic access to higher education is determined by “individual capacity,” echoing the mandate in the state’s constitution. However, the law also singles out indigenous peoples in particular, indicating that “student assistance” and special care will be provided for them within higher education, but there are no details provided regarding whether special measures to promote equitable access are considered. Lei de Cotas, a historic measure passed by the federal government and the Supreme Court, is an affirmative action legislation that promotes a quota system reserving seats in public universities and vocational or technical colleges based on self-declared classifications of ethnicity, race, indigeneity, and class. Therefore, it is a compulsory systematic effort to ensure that half of all public higher education institution spaces are reserved for reasons other than the state’s traditional merit-or-individual capacity-based admissions requirements. Specifically, the legislation classifies four areas of qualified applicants—Blacks or Afro-

descendants, indigenous peoples, and persons of mixed race from low-income households who studied in public schools, expressing the government's (at least) surface-level understanding of the intersectionalities that persist within the state between race or ethnicity and socioeconomic status. Brazil's national education plan (PNE), the state's newest and most comprehensive education plan, calls for a need to promote equitable measures and equal access to resources within public higher education systems and institutions for Afro-descendants, quilombolas, indigenous peoples, and persons with disabilities. Some of the unique goals and objectives included: expanding opportunities to access higher education for minorities and indigenous students; increasing the number of minority and indigenous faculty members at higher education institutions (through special training); expanding and extending access to distance learning programs and courses for disadvantaged groups; integrating cultural customs and traditions of Afro-descendants, indigenous peoples, quilombolas, and persons with disabilities in programs and courses; and expanding access for underrepresented groups in STEM fields of study. The Brazilian government's plans to create environments that accommodate the traditions and identities of these respective peoples and groups is objectively forecasted to promote more inclusive and accessible spaces within higher education systems. The Constitution of Iran addresses access to higher education in the broadest terms—that it is free, suggesting that all have equal access to higher education. Since the Civil Code refrains from containing any reference to higher education or minorities, it is of no relevance here. Furthermore, legislation regarding admissions and access to higher education is constantly changing in Iran since the Islamic Revolution of 1979, and it is challenging, therefore, to identify and locate legislation that specifically addresses higher education access criteria. For instance, legislation regarding the

national entrance exam and the corresponding requirements to qualify for admission to universities and colleges—meaning that access to higher education is based on individual merit—is ironically inaccessible. Thus, the Iranian government is an anomaly in this particular section, as the only legislation that *was* discovered regarding equal and equitable access to higher education for disadvantaged groups literally counters such notions, and it was discovered inadvertently by the UN. Iran’s government does not make any specific reference to educational measures to promote equal and equitable access for any of its recognized (or unrecognized) minority or indigenous populations. Instead, there is a confidential 1991 memorandum from the secretary of the Islamic Supreme Revolutionary Cultural Council (ISRCC) to the Supreme Leader Ayatollah Ali Khamenei, calling for Bahá’ís to be denied access to higher education and that their development be thwarted, and the letter from MSRT simply reiterates their expulsion based on the recommendations of the memorandum. In other words, the Iranian government’s policy introduces and encourages adopting measures that ensure unequal and inequitable access to higher education for one of its largest religious minorities. New Zealand’s Education Act 1989 highlights the need for “equity of access” and the responsibility of higher education institutions in ensuring measures are in place. The Bill of Rights Act 1990 and Human Rights Act 1993 both address special measures in the presence of inequality based on discrimination, conveying that special measures “in good faith” for disadvantaged groups is permitted and a means of challenging discrimination. Human Rights Act 1993 extends the government’s right to implement special measures within educational institutions to promote equal and equitable access. Both the Education Act 1989 and Human Rights Act 1993 introduce the discourse regarding Māori-based education and wānanga (higher education institutions serving Māori populations

through the adoption and implementation of Māori traditions, culture, and customs). These same measures are carried through the more contemporary establishment of the Ministry of Education's Tertiary Education Strategy 2014-2019 and Ka Hikitia initiative targeting the educational advancement and development of Māori learners across all levels of schooling, especially to improve achievement rates in higher levels of education and graduation rates. As mentioned earlier, Ka Hikitia's focus area on tertiary education seems to be drafted more to align with TES 2014-2019 than with Māori philosophies and tradition, even if the strategy itself intends to incorporate Māori knowledge in its implementation. Both of these strategies do incorporate te reo Māori terms and references to Māori-related education and higher education goals and objectives, honoring the mother tongue of New Zealand's first inhabitants, and te reo Māori language programs are heavily promoted in Ka Hikitia's strategy at the higher education level (in addition to lower levels of formal schooling). Although adopting Māori-specific strategies are assumed to be effective in improving equal and equitable access to higher education, there are no details or explanation provided regarding how indigenous knowledge implemented in this strategy is relevant to access. Special measures are not introduced in either of the two strategies. References to wānanga and their specific roles and capacities are minimal in scope. For instance, in TES 2014-2019, it is generally stated that wānanga foster "improving individual achievement of Māori" (p. 21), suggesting that wānanga are primarily established to: 1) improve academic "achievement" of Māori students (as according to the Ministry of Education's standardized indicators) and 2) help isolate or segregate Māori from the general tertiary population. Ka Hikitia, on the other hand, includes no references to wānanga in spite of it being a Māori-specific strategy—far different from the content of the MTRG's ever-evolving Māori

Tertiary Education Strategy, which was not adopted by the Ministry of Education. Such lack of detail regarding the characteristics, purpose, and philosophies of wānanga exemplifies a disregard for Māori ways of knowing and indigenous knowledge systems and traditions. The language in both TES 2014-2019 and Ka Hikitia suggest that Māori students are to pursue higher education separate from—not with—the general population indicating that Māori will be more successful in higher education if they study with members of their own “race.” Although te reo Māori is infused in the state’s tertiary education strategies, there is no indication in any legislation that Māori customs, knowledge, language, and traditions are to be likewise integrated into any of the other four categories of tertiary education institutions that are not identified as wānanga.

Quality of Higher Education

States’ directives and interpretations of quality-level higher education were the most challenging to identify. Standards of quality in higher education varied and were often ambiguous, and measures of quality expectations were rarely discussed. Quality regarding general education was more common than references to higher education specifically. The Constitution of Brazil is the foundational legislation to introduce this concept of “a minimum standard of quality education,” which is left undefined until resurfacing in LDB where it is explained that the minimum standard of quality education is the quantifiable value of investment or “inputs” necessary to achieve the desired level of teaching and learning (per student). This definition falls short of addressing the qualitative indicators of quality, particularly for disadvantaged groups and marginalized populations (e.g., their degree of access or inclusion, identity preservation, etc.). However, this definition provided in LDB also suggests that “quality” is relative within each context and according to each

governmental body. For instance, in two other sections of the legislation, there is a call for upholding “standards of quality assurance,” which are most likely quantitative in scope, and ensuring “minimum standards of quality” while resolving “disparities in access.” PNE is the most extensive of Brazil’s legislation addressing quality education, especially at the tertiary level. In addition to mandating a general improvement in the quality of education, as vague as that sounds, PNE also focuses on quality within higher education by highlighting “expansion” and “improvement” of processes and outcomes within higher education systems (i.e., decision-making, assessment, value of higher education degrees, human resources, faculty training, advancement of technology, establishing national and global research networks). Within PNE, it became evident that to *improve* outcomes most likely resulted in “quality improvement.” On the surface, one would deduce that there are no references to standards or quality in any of Iran’s legislation and policies, but this would be an incorrect assumption. In the Constitution it is evident that Iran’s governance system is established upon shari’a or Islamic law and criteria, which, according to the government, is considered to be the highest level of standards it can attain. Thus, it would be appropriate to say that “minimum” standards or quality is not a sufficient way to describe Islamic law. Nonetheless, there are no references to the quality of higher education in any of the state’s legislation or policies discussed in this chapter. Rather, there is reference to maintaining and ensuring the moral education of children, which again reflects the standard of moral code in Islám. It is unclear as to why allusions to quality of general and higher levels of education are completely missing from the discourses. The significance and value of higher learning should not be confused with the level of quality of such learning. However, its absence does suggest that perhaps the government’s systemic reliance on Islamic criteria is considered to be divine

in origin and is, therefore, sufficient as a standard for quality that it requires no further explanation. It is perhaps, for this reason, the confidential Golpaygani Memorandum includes the recommendation that students identified as Bahá'ís be enrolled in schools that strongly “impose” Islamic ideologies and teachings, but it is also contradicting to this perception of Islamic principles—why would a persecuted religious minority be permitted to access education of such a standard? Even the quality of life and rights dictated in the Civil Code are completely based upon ambiguous cultural and religious criteria defined by the state. New Zealand’s legislative measures and policy strategies also shy away from discourses about quality higher education and education in general, but only in varying degrees. Education Act 1989 calls for higher education institutions to promote high levels of quality learning and research. This directive is carried forward, but its meaning is lost in translation as newer laws and policies subsequently followed. The Bill of Rights Act 1990 and Human Rights Act 1993 do not address quality in terms of education or higher education, and TES 2014-2019, as already discussed, is framed by a human capital frame. Ka Hikitia, an extension of TES 2014-2019 does not focus on quality—not even within the Māori framework.

Generally, emphasis on quality of higher education and quality of higher education for minorities and indigenous peoples is nearly non-existent. It would be expected, at the national level, that states are fully aware of their demographic landscape, of the poor quality standards of education that disadvantaged groups experience prior to reaching higher education, preceded by earlier levels of schooling. Naturally, therefore, the state should have more concrete plans defining and describing what quality standards *should* be and what they should look like across all levels of education.

Summary

State legislation, policy measures, and strategies are different from international instruments since they are tailored towards the diverse characteristics and qualities of their respective national boundaries and jurisdictions. They serve as opportunities to “fill in the gaps” or clarify the ambiguities that are typical of most international human rights discourses. Therefore, there are indications that some gaps are narrowed, while others either remain the same—ignored or overlooked, and sometimes, further amplified. Looking at the overall focus of this study and the corresponding analyses provided in this chapter, a glimpse into understanding the depth and scope of whether equal and equitable access to quality higher education for indigenous peoples and minorities presents a number of possibilities.

First and foremost, it is obvious that the more relevant the legislation is, the more likely it will help in assessing this phenomenon. Constitutions, including New Zealand’s uncoded constitution, were the least informative on content specific to higher or tertiary education. As a matter of fact, New Zealand’s uncoded constitutional texts included no information on tertiary education whatsoever, whereas Brazil had a brief section on higher education, and Iran only made a few sweeping references. Similarly, mention of indigenous peoples and minorities was not as significant at the constitutional level. Rather, references were more generalized, but there were instances in which specific racial, ethnic, linguistic, religious, and indigenous groups were mentioned and even focused upon, especially as newer forms of legislation emerged that were framed by a thematic topic or issue (education, higher education, human rights, etc.). Secondly, how governments connected their expectations of higher education to their perspectives of their respective indigenous and/or minority populations became clear. In other words, if the government consistently describes and

explains the various benefits of higher education across various levels and holds higher education in a position or status of significance, while maintaining a constant recognition and awareness of the status of its indigenous and minority peoples and groups, then it is very likely that the state will include legislation or language within specific legislation that targets measures and rights on access to higher education for specific groups (since the greater context of inequality and inequity these underrepresented groups face is familiar to and of primary importance to the state). Brazil's legislation was very cohesive and progressively advancing in its focus on equal and equitable access to higher education for minorities and indigenous peoples, from the basic and sweeping language of the Constitution to the more detailed and comprehensive clauses of PNE. New Zealand, on the other hand, manifested a divergence at the writing of TES 2014-2019 from its source legislation, the Education Act 1989. Third, it is important to point out that these three countries have some similarities as well as differences that extend far back before any formal higher institutions of learning were locally established. They may have each suffered or even promoted colonial and imperial conquests during distinct periods of history, but these events have shaped how their present cultures, traditions, and knowledge systems, including the quality of education and the status of disadvantaged groups has evolved or regressed. Thus, it is necessary to recall the socio-historical contexts of these states when analyzing their laws and policies, as some anecdotes may be implicitly or explicitly included or omitted, and having this background knowledge helps fill in some of the gaps during the analysis. Fourth, quality of higher education appeared to be too abstract of a topic for states to sufficiently include in their particular laws and policies. If any references to quality were indicated, most were specific to general education. Quality of higher education for minorities and indigenous peoples in particular

was absent, but this omission most likely has to do with the fact that most global discourses on quality higher education did not emerge until the late 1990s/early 2000s (UNESCO, 2000). Adopting and integrating cultural traditions and customs of disadvantaged groups is not equivalent to quality education, but such methods can definitely help achieve and improve a quality level of higher learning, but that link was missing from these discourses. Lastly, there were a number of corresponding themes that emerged throughout the analysis that were still relevant to the higher education of minority and indigenous populations, including: the promotion of diversity and pluralism, the role and purpose (and benefits) of higher education, the idea of expanding and offering free higher education, identity and cultural preservation and celebration, and traditional knowledge-sharing.

Overall, all three states require more revisions and inclusions of language and measures that ensure and maintain equal and equitable access to quality higher education for their minority and indigenous populations. However, legislation is not effective on its own in addressing and resolving the unequal and inequitable—unjust—conditions that prevail for specific persons or groups within a country. Rather, the numerous factors that contribute to such problems such as grave inequality—ignorant attitudes and behaviors—that consequently result in relevant legislation aimed to curb the problem must be addressed, and this is not only true for laws and policies about granting equal and equitable access to quality-level higher education for indigenous peoples and minorities; this holds true for any kind of legislation.

Chapter 8: Lessons Learned, Recommendations, and Conclusions

Introduction

Overall, these texts revealed how governments and international representatives perceive the identities and protections of the rights of indigenous peoples and/or persons belonging to minority groups. Higher education policies differed across the three countries, but similarities were also revealed in how higher education and other education systems are valued and perceived within these unique contexts, as this also holds true across many international instruments. This chapter will begin by highlighting the policy-related, research, and practical implications of the comparative analysis of national and international human rights discourses addressing access to higher education in relation to equality, equity, and quality. Secondly, the explicit and implicit strengths, limitations, and challenges that these national and international discursive texts manifest are explored and analyzed. Finally, the chapter ends with recommendations on how such national and international discourses can be improved in addressing equal and equitable access to quality-level higher education for minorities and indigenous peoples. By applying the combined critical discourse analysis (CDA) and interpretive policy analysis (IPA) methodologies, the conclusions and recommendations presented are influenced by overlapping lenses from critical perspectives on race, indigenous knowledge systems, decolonial theory, minority rights, and social justice. Lastly, implications for further investigation and application are also proposed.

Barriers to Higher Education and How Governments Responded

The disadvantages and underrepresentation of Afro-descendants and indigenous peoples in Brazil, Bahá'ís in Iran, and Māori in New Zealand were naturally reflected within the educational systems of the three countries as well—in public and private institutions

alike. Disparities in higher education in particular manifest the greatest discrepancies, as the number of Afro-descendants, indigenous peoples, and Māori declines dramatically from primary to tertiary levels of schooling. Disparities in admissions to public higher education institutions versus private higher education institutions obviously had much to do with the income inequality that these same disadvantaged groups endure. Although, Bahá'ís are not currently permitted to enroll in any formal higher education institution in Iran, there was a period in which they were allowed to enroll in universities and colleges. Even then, various restrictions and obstacles were still set in place, but they did not completely ban Bahá'ís from being admitted into higher education institutions as they do now. So the systematic barriers of access to higher education for these indigenous and minority populations may slightly vary, but the existence of such barriers cannot be denied. The Iranian government may be directly responsible for blocking the academic progress of its Bahá'í population, but the Brazilian and New Zealand governments are indirectly accountable for the inequality and inequity that Afro-Brazilians, indigenous peoples, and Māori, respectively, are experiencing in their higher education pursuits.

For this reason, the governments in Brazil and New Zealand have implemented legislation and policies in an attempt to address these vast disparities in higher education enrollment. The Supreme Court decision in 2012 that resulted in the passing of Lei de Cotas requires that all public universities and technical colleges in Brazil reserve 50 percent of their seats for self-identifying Afro-descendants, mixed race, indigenous peoples, and students from low-income households. The admissions of students will vary from state to state and municipality to municipality, as the legislation requires quotas to be reserved for those populations that are directly represented within the jurisdiction and vicinity of each

university or college in question. The affirmative action legislation is to be fully implemented by 2016. Lei de Diretrizes e Bases da Educação or LDB, which preceded Lei de Cotas, and Plano Nacional de Educação (PNE), which followed the quota law, are both consistent with the theme of offering special measures for disadvantaged groups (i.e., indigenous peoples, quilombolas, Afro-descendants, persons with disabilities, and persons from low-income households), especially PNE. Iran's government, on the other hand, is not doing anything to resolve the barring of Bahá'ís from studying and teaching at universities and colleges in the country, because the government drafted and enforced the policy denying them such access. However, due to the exerted efforts and support of the international Bahá'í community, faculty and universities around the world, and human rights organizations, the Bahá'í Institute for Higher Education (BIHE) has been successful in serving as an alternative avenue of higher learning for Bahá'ís in the country. New Zealand's parliamentary response to addressing obstacles for Māori access to higher education is rather diffused. The establishment of wānanga, as introduced in New Zealand's Education Act 1989 provides an option for Māori and others who want to study in an environment that fosters Māori cultural traditions, language (te reo), values, and ways of knowing (mātauranga Māori). The Education Act 1989 calls for a Tertiary Education Strategy (TES) 2014-2019 that must address four long-term strategic goals, including the “the development aspirations of Maori and other population groups” (§ 159AA(2)(d)). Tertiary Education Strategy 2014-2019 is the current TES—drafted by New Zealand's Ministry of Education in cooperation with the Ministry of Business, Innovation and Employment. The last measure adopted by Parliament, Ka Hikitia - Accelerating Success 2013-2017 is the current strategic policy that focuses on Māori “success” across all education levels. At the tertiary level, Ka Hikitia emphasizes the

importance of Māori academic achievement at a level equivalent to non-Māori students, Māori participation in the workforce, learning of Māori language, and the advancement of mātauranga Māori in the areas of research and study.

The barriers minorities and indigenous peoples are experiencing to access higher education have not been removed nor lessened. It is too soon to tell, however, how government policies and legislation may affect if and how more students, particularly from underrepresented groups pursue and enroll in higher education. Measures adopted in Brazil and New Zealand will need to be evaluated over time, and those in Iran need to be reversed in order for any indication of progress and growth to be detected.

International and National Allusions to “Equal” and “Equitable” Access to “Quality” Higher Education

Discourses on equal and equitable access to quality higher education are evidently necessary conversations to have, especially when considering underrepresented groups who are deprived of such opportunities. As indicated from the sub-section above, the status of minorities and indigenous peoples within a state clearly reflects to what extent the government is willing to protect and promote their equal rights, implement equitable measures, and highlight the importance of quality of education for their most marginalized peoples and groups (acknowledging that quality is usually compromised for underrepresented groups). International instruments depend upon how states interpret international human rights law within the context of the nation-state. Even explicit “recognition” of indigenous peoples and minority groups—what Coulthard (2007; 2014) calls the “politics of recognition”—sometimes reproduce arrangements of colonial power rather than promote configurations of coexistence; thereby influencing whether equality and

equity are adequately discussed. Thus, how states recognize and disregard the diverse peoples and groups within their jurisdictions can conflict with the standards set in international human rights law.

In Iran, for instance, Islamic law or shari'a is claimed to be used as the barometer to dictate who has equal rights in the state and who does not (Muslims—Shi'a Islām is the “official” religion of the state—and three religious minority groups—Zoroastrian, Jew, and Christian). An-Na'im (2009) indicates that most of the time “modernist” interpretations of Islām are

similarly reconcilable with international human rights norms, but that acceptance of such ideas (their internalization within Islamic belief systems) depends far more on conversations and debates within Islam than on cross-cultural dialogue, let alone external attempts at persuasion or imposition (Twining, 2009, p. 1).

An-Na'im further argues that coercive enforcement of shari'a by the state “betrays the Qur'ān's emphasis on freedom of religion, voluntary acceptance, and individual interpretation of Islām” (Twining, 2009, p. 1). To the “outside observer,” therefore, the state's policy and guidelines regarding people qualified to sit for the national entrance exam for university admissions and who can access higher education promote both unequal and inequitable conditions for its Bahá'í minority. Access based on individual merit is selective, and equitable measures are limited to very few exceptions (persons with disabilities and military personnel). From the perspective of the Iranian government, however, all those peoples and groups who are “recognized” are granted equal rights—as dictated by shari'a. So in this context, equality is conditional, and there is no discussion of equity in regards to

access to higher education, but special considerations are made for veterans and persons with disabilities.

As in international law, Brazil emphasizes equal access to higher education on the basis of individual capacity. New Zealand's legislation has specific requirements for enrollment eligibility in the country's tertiary education institutions (i.e., citizenship, age, and minimum eligibility criteria set by the council of each institution), and therefore, there is no standardized or equal criteria for accessing formal higher learning in the country. Both states, however, do specify that institutions may provide accommodation or equitable measures for underrepresented groups, such as the option of offering "[s]pecial material help and educational solutions" as mentioned in the World Declaration on Higher Education. Brazil's Lei de Cotas took that option of granting special measures out of the grips of universities and colleges and made it compulsory by federal law. Thus, equity in the guise of quotas surfaces in the state of Brazil. New Zealand's permission of special measures granted for "under-represented groups" remains vague and undefined (as discovered in the international instruments that referred to varying types of "measures"), however—most likely since decisions to grant special admissions are made at the institutional level and not at the state level.

As far as binding treaties are concerned, the Convention on the Rights of the Child (CRC) likewise highlights the importance of education, requiring that states ensure higher education is "accessible to all on the basis of capacity by every appropriate means" (Article 28(1)(c)); the International Covenant on Economic, Social and Cultural Rights (ICESCR) follows suit, but goes a step further in advocating access to higher education "by the progressive introduction of free education" (Article 13(2)(c)); and lastly, the Convention

Against Discrimination in Education (CADE) also calls for equal access to higher education on the basis of capacity, distinct from the mandate set in the Universal Declaration of Human Rights (UDHR), which addresses equal access to education solely on the basis of merit. These divergences from UDHR, therefore, exemplify that capacity is understood to suggest that despite the inherent dignity and humanity shared by all, there are a diversity of capacities among peoples. Indigenous peoples, minorities, and other disadvantaged groups and vulnerable populations, in particular, are often either unaware of or unable to identify and make use of their true capacities and inherent dignities, because of the various social barriers that prevent and/or deny them from doing so. CRC specifically raises attention to the needs of minority and indigenous children to access education; CADE calls upon states to protect educational rights for national minorities; and the World Declaration for Higher Education specifically identifies states' necessity to ensure equitable access to higher education via "special material help and educational solutions" to break down the obstacles that prevent indigenous peoples, minorities, and other disadvantaged groups from having equal and equitable access to higher education.

References to quality of higher education are mostly vague and ambiguous or non-existent at national and international levels. At the national level, especially in the case of Brazil and New Zealand, "high quality" higher education is routinely addressed in later laws and policies rather than earlier ones, especially as they relate to indigenous peoples and minorities (Brazil's LDB and PNE (not Lei de Cotas, surprisingly) and New Zealand's Ka Hikitia). Likewise, the World Declaration on Higher Education and the Framework for Priority Action, as well as the "Minorities and the Right to Education: Recommendations of the First Session of the Forum on Minority Issues" report and the outcome document and

thematic papers of the World's Indigenous People” of the World Conference on Indigenous Peoples (WCIP) (“Education and Indigenous Peoples: Priorities for Inclusive Education” and “Knowledge of Indigenous Peoples and Policies for Sustainable Development: updates and trends in the Second Decade”) all underline the issue of quality in addressing education and higher education for underrepresented and disadvantaged groups. It is high quality in particular that is emerging as a relevant theme in the education of marginalized peoples and groups to date.

International instruments tended to emphasize equal and equitable access to higher education in general, and national governments did the same, but since public higher education institutions and systems were overseen by main branches of the central government, access to private higher education institutions was not as pronounced, and in some cases, it was not even addressed at all. It was as if private higher education was an alternative option for those who had the “privilege” to smoothly transition between public and private choices of tertiary education as they desired. By omission, private higher education or tertiary institutions might be perceived as “exempt” in adopting the requirements to promote equal and equitable access to quality higher education for indigenous peoples and minority groups; and alternatively, they might even be irrelevant to the discourse for a number of reasons (e.g., higher tuition costs, less emphasis on quality, promotion of mass enrollment). The World Declaration on Higher Education and Framework for Priority Action, which served as the foundation of this discourse, emphasized the need for minorities, indigenous peoples, and other “special target groups” to be able to access higher education in an equitable fashion. Equal access, on the basis of individual merit, is to be given “priority in the future,” suggesting that equal access is not a

feasible reality at this time. The level of quality in higher education is approached as a “multidimensional concept,” factoring in the systemic scope of tertiary learning. The special measures and emphasis on quality addressed in Brazilian (and in some instances, New Zealander) legislation strongly parallel the vision and mission of the World Conference on Higher Education instruments, and the government’s specific references to marginalized populations even further elucidates the broader inferences in the non-binding international instrument.

International and National Considerations of the Right to Higher Education

The World Declaration on Higher Education and the accompanying Framework for Priority Action hold the dominant discursive spaces within international human rights discourse that directly focus on higher education and the right to higher education. They are also the only two instruments drafted at the international level that explicitly address the purpose of higher education, multiple dimensions and references to both equal and equitable access to higher education, notions of quality within higher education, and the benefits of higher education for disadvantaged groups, including indigenous peoples and minorities and how to accommodate and promote their access to tertiary education. Three of UNESCO’s select, nationally-based objectives adopted in these two instruments—“access, equity, quality, relevance and diversification”—are closely analyzed in this study, but the issues of relevance and diversification are just as important and significant to the rightful inclusion and participation of indigenous peoples and minorities in higher education systems around the world. National legislation and policy measures on the right to higher education, on the other hand, naturally outnumber and further expand upon and beyond discourses at the international level, but they align regarding many attributes of the right to higher education.

First, the right to higher education is equivalent to the right of maintaining identity recognition and preservation, thus contributing to a culture of diversity.

Brazil's national education plan (PNE)—the newest piece of legislation among all national and international discourses analyzed in this study—is the only national text that details the nature and purpose of higher education, while simultaneously emphasizing the need for diversity, inclusion, support, and participation of marginalized populations (i.e., Afro-descendants, indigenous peoples, persons with disabilities, and so on). PNE's sections on higher education very closely resemble the World Declaration on Higher Education, especially regarding issues of cultural preservation through the promotion of indigenous knowledge and its coherence with contemporary innovations and advances in science and technology, teaching and studying of minority and indigenous languages, and the application of minority and indigenous pedagogical approaches to develop the resources of higher education to serve local and national communities. Additionally, guaranteeing the right to higher education is not solely the responsibility of one party or stakeholder. Unlike most other international instruments, the Framework for Priority Action targets the practical implications of the directives set out in the World Declaration on Higher Education, and it does so according to three tiers of actors or agents called upon to take action in implementing these policies—states, higher education systems and institutions, and international agencies and UNESCO. In addition to calling upon states—as usually all international instruments do—UNESCO calls upon other entities, including itself, to collaborate in achieving the higher education goals set in the World Declaration on Higher Education. Brazil's PNE requires that all individuals, levels, and structures of higher

education systems and institutions fulfill their respective roles in order to ensure access to quality higher education for all.

Third, ensuring access to higher education ensures benefits for the state. Iran's Constitution emphasizes that higher education should be free and accessible to all within the capacity of the state, but specifically so that the development and resources of the country are advanced and result in the sustainability and self-reliance or independence from international economic dependency and other relationships (e.g., imported goods, labor, etc.). New Zealand's TES 2014-2019 and Ka Hikitia both underscore the link between access to higher education and growth and progress of the job market nationally. Academic rigor and robustness are qualities that all three governments share in the development and advancement of the state. Aside from the World Declaration on Higher Education and Framework for Priority Action, international instruments, on the other hand, do not explore the benefits of higher education. As a matter of fact, the World Declaration on Higher Education emphasizes not only the economic gains for nations, but the moral, social, and spiritual gains that also affect societies.

Overall, the "right to higher education" is language that resonates more closely with international human rights law than with national legislation and policy, especially since states are interpreting what the right to higher education looks like at the national level. Since international human rights instruments are naturally much broader in scope and content, the manner in which they connote the right to higher education for various populations is most often characteristic of brevity and ambiguousness. Nonetheless, the drafters do make it clear, when higher education is mentioned, that it is a right for everyone—on the basis of capacity or merit, and when necessary and applicable, should be accessible by means of special

temporary measures. Aside from the content of international instruments, however, the right to education for indigenous peoples and minorities are considered to be especially viable and appropriate issues to recognize and apply, as indicated in chapter 5. Contemporary parallel dialogues such as the report from the First Session of the Minority Issues Forum and the documents from the World Conference on Indigenous Peoples prove that greater attention and concentration is rousing a vested interest in international discourses relevant to the right to higher education—formal and non-formal—for minorities and indigenous peoples.

Lessons Learned: Strengths, Challenges, and Limitations of Comparative International and National Discourses

Particular lessons related to the scope of the study—regarding the nature and characteristics of legislation and policies—emerged that informed the researcher during various phases of this study. There are strong qualities found in both national and international-level discourses, but there are also points of contention between the two, where evidence of limitations and/or challenges also surface at times. Some of these discourses on higher education policy regarding access and quality for indigenous peoples and minorities have powerful implications on their own either at the national or international level, and in other instances, one comparison with the other also reveals equally pronounced policies and measures, while in other cases, their inherent weaknesses are revealed.

Strengths to Consider

Internationalizing or “Universalizing” Rights

Although criticisms exist regarding the true “universal” or “international” applicability and relevance of international human rights law, particularly among skeptics of international law who argue that the foundation of the discourse is comprised of Eurocentric

sentiments that reverberate notions of imperialism and colonialism (Anghie, 2006; Gathii, 1998; Korieh, 2007), this international normative framework was established with the intent to protect and enforce human rights for “all,” and therefore, it has the capacity to appeal to a broader population (hence the establishment of the current processes and procedures of member state affiliations and states parties to treaties). International law has initiated an ongoing conversation, building momentum for a dramatic shift in the future of promoting human rights and protections for all peoples of the world. The broad scope of standards of most international instruments, therefore, allows member states and states parties to adopt measures that are most relevant to their respective boundaries and populations and to help frame their national policies and legislative measures, including those specifically targeting access to higher education for persons belonging to minorities and indigenous peoples. Thus, in spite of their global reach, the ambiguous nature of international instruments makes them malleable enough, allowing states to apply international laws within national and territorial spaces.

Furthermore, other binding and non-binding international instruments discussed, including: International Covenant on Civil and Political Rights, Convention Concerning Indigenous and Tribal Peoples (No. 169), Convention on the Rights of Disabled Persons, Declaration on Race and Racial Prejudice, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNESCO Universal Declaration on Cultural Diversity, Declaration on the Rights of Indigenous Peoples, and Vienna Declaration and Programme of Action underscore the importance of issues and concepts that are highly relevant to the promotion of access to higher education for these respective vulnerable populations: self-determination; self-identification, preservation of cultures,

customs, traditions, language, and other aspects of identity formation; consultation and collaboration with indigenous communities; special equitable measures for access and success; establishment of own education systems and institutions; and inclusion of minority and indigenous culture, history, and knowledge in educational curricula. Another strength of international human rights law discourse, therefore, is its capacity to acknowledge the difference between the long-term aspirations of achieving global equality, equity, and peace and the need to address current unequal, inequitable, and unjust realities affecting masses of disadvantaged peoples such as minorities and indigenous peoples.

The most convincing indication of the validity of international-level discourses is how national discourses can align with and expand upon them, especially as they relate to the sometimes unique victories and crises within nations, regions, and territories affecting the plight of disadvantaged groups. As discussed in chapter 7, New Zealand's higher education policies are so closely aligned with international standards that some might even believe the New Zealand government used international law as a model to define and shape its own constitutional laws and policies, including those regarding *whare wānanga* and general higher education access for Māori. At the national level, New Zealand's higher education policies are quite resilient in the language, content, and tone presented regarding the rights and protections of the Māori population. One of the most visible elements of New Zealand's recognition of Māori in higher education laws and policies is the consistency of the state's reference to and usage of *te reo Māori* (the Māori language). Use of the such language choice not only reveals the state's intended target audience regarding tertiary education (among other kinds of) policies in Aotearoa, but it is also indicative of the state's willingness and understanding of the importance of reinforcing the use of the mother tongue for its Māori

population, especially as dictated in international human rights law for indigenous peoples. Overall, the language and content of New Zealand's higher education policies in the Treaty of Waitangi, Treaty of Waitangi Act, 1975, Education Act 1989, Human Rights Act 1990, and the Tertiary Education Strategy all imply the state's acknowledgement of the unequal and inequitable opportunities for access to higher education, as well as the poor quality of education available to Māori communities.

Brazil's 2012 Lei de Cotas signifies a dramatic turn of events in the country's educational policies, introducing higher education measures that underscore the nation's intersecting lines of inequality across race, ethnicity, indigeneity, and socioeconomic class. This recognition is definitely a strong point, as not even one of the international instruments analyzed in this study addresses multiple facets of identity that further contribute to the marginalization of minority groups and indigenous peoples. The state's Plano Nacional de Educação (PNE) likewise recognizes the obstacles that poor Brazilians of African and indigenous descent face in terms of accessing all levels of education, addressing the need for indigenous communities to have access to their "língua materna" and to universities of higher/improved standards and quality, as required in international human rights standards specific to indigenous peoples and minorities. Furthermore, inclusive educational measures are prescribed in order to carry out the social function and benefits of education and to ensure cultural identity of minority and indigenous populations.

Distinct from any of the policy and legislative measures of Brazil and New Zealand and unlike any of the structures set within international human rights instruments, the Islamic Republic of Iran's constitution provides a justification and contextual synopsis of the Islamic standards the state chooses to frame and enforce its laws. The preamble to the

constitution resonates with Davis' (2002) notion of the "movement narrative," which, in this instance, transmits a post-colonial identity of the state through a liberation theology framework in the state's interpretation of Islám as a liberating response to imperialism and oppression: "The unique characteristic of this Revolution, as compared with other Iranian movements of the last century, is that it is religious and Islamic" (Islamic Republic of Iran, 1979). Such a narrative provides a meaningful backdrop for the promotion and protection of minority and other marginalized populations, and the requirements set in international discourses relevant to underrepresented groups could provide convincing justifications for such laws and better inform states regarding their relevance and necessity if such context was also provided or at least accessible in order to understand the perspectives and frameworks underlying the drafting of these international instruments (and national laws and policies).

Limitations of the Comparative Discourses

In addition to identified strengths across national and international discourses, limitations also exist that need to be addressed. The limitations that are covered here include: the difference between enforceable and unenforceable policy; confusing and contradictory language found in such policies and legislative measures; the varying definitions of indigenous peoples and minorities provided in the discourses; and the lack of emphasis on higher education within national and international discourses.

The "Weight" of Words: The Difference between Enforceable and Unenforceable Policy

Introduced earlier in this study was the difference between hard law or internationally binding treaties and soft law or international declarations and recommendations. With regard to addressing the right to higher education for minorities and indigenous peoples, all but one (ILO 169 for indigenous peoples) of the binding treaties

analyzed (i.e., ICCPR, CRC, CEDAW, CADE, and so on) include very broad directives, which are left to be more openly interpreted by the state (which can be perceived as both a strength and a challenge). Most declarations (aside from UDHR, but given that it is the first and the foundation of all other international instruments puts it in a category of its own), on the other hand (i.e., World Declaration on Higher Education, Framework for Priority Action, Declaration on Race and Racial Prejudice, Declaration on the Rights of Indigenous Peoples, Vienna Declaration and Programme of Action, and the Declaration on the Rights of Persons Belonging to Minorities) include more detailed guidance for states to ensure the protection of minority and indigenous peoples' rights, as well as their access to higher education, but states are by no means "legally" responsible nor held accountable to abiding by the directives of such non-binding instruments, as there are no formal mechanisms currently in place for signatories to be held accountable to international soft or hard laws. By far, the World Declaration on Higher Education and the Framework for Priority Action are the most detailed and thorough, both in terms of heightening the level of discourse on the necessity for quality standards in higher education and equal and equitable access for disadvantaged groups; but again, it is by no means enforceable, getting lost in the ever-growing pile of the "normative discussions" of international instruments that follow post-1948. Although most international treaties do have formal mechanisms in place, their enforceability is still highly questionable, and as with non-binding instruments, there is no international judicial body or system that holds states legally accountable as in the case of international criminal law. In the words of Collingsworth (2002), "If there is any consolation to the failure to reach a breakthrough agreement . . . it is that any new standard would have joined a stack of well-intentioned human rights conventions and resolutions that remain

basically unenforceable” (p. 183). Thus, even the legal potency of treaties and states parties’ accountability is questionable when analyzing national-level policies, such as those regarding higher education in Brazil, Iran, and New Zealand. As UN Secretary-General Ban Ki-moon indicated about the Universal Periodic Review (UPR) of states’ commitment to binding treaties, it “has great potential to promote and protect human rights in the darkest corners of the world” (OHCHR, 2012). So the *potential* is there for monitoring and enforcing international treaty commitments at the state-level, but is that sufficient? Subsequently, this degree of uncertainty results in questions about the potential and actual legitimacy of higher education laws and policies in place in these three countries? How truly robust are national-level laws and policies with regards to their weight and significance in relation to higher education? Indigenous peoples’ rights? Minorities’ rights? These doubts of enforceability at both the national and international levels, therefore, raises the question if such measures are meaningful at all if they are to be drafted and adopted, yet remain unenforceable.

The unenforceable qualities of laws and policies, particularly at the international level, has much to do with the disagreements that are not captured in the final drafts of such measures. Perceptions of international instruments as “universal agreements” may also be misrepresenting the drafting processes of the documents themselves. What is captured in words in a “final” draft does not necessarily reflect the nature of the discussions and consultations that take place up until a draft is finalized, submitted, and widely adopted. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), for instance, “is not entirely a consensus document but rather is described as a statement on which most of the working group could agree was consonant with international law on human rights” (Lincoln

& Denzin, 2008, p. 564). Even the chairperson of the Global Indigenous Caucus indicated that UNDRIP did

‘not represent the sole viewpoint of the United Nations, nor did it represent the viewpoint of all the world's indigenous people. It was based on mutual respect . . . It was based on rights that had been approved by the United Nations System but which had somehow over the years, been denied to indigenous peoples’ (Lincoln & Denzin, 2008, pp. 564-565).

The same holds true for state legislative or policy measures. It is unclear as to what was left out of the final policies and laws that Brazil, Iran, and New Zealand drafted regarding access to higher education for minority groups and/or indigenous peoples.

One Word, Many Meanings: Contradictory and Confusing Language, Missing Content, and Implicit Meanings

The state policies and legislation under analysis, particularly the higher-education related measures targeting the poor, Afro-Brazilians, and indigenous peoples in Brazil, Bahá’ís in Iran, and Māori in New Zealand are more than just a combination of words, phrases, sentences, and paragraphs. Rather, they also reflect an attempt to capture mutually agreed-upon attitudes, beliefs, perceptions, and understandings of those who drafted them in the first place, and this also applies to international human rights instruments. In addition to the explicit language and broader content of such measures, implicit meanings, unclear or contradictory language, and the absence of issues highly relevant to these discourses are just as important to recognize and understand.

In the realm of international human rights law, equal access to higher education is most commonly dictated through the use of words or brief terms such as “all,” “no one,” “every,” and “everyone.” For example, in the CRC, higher education shall be made

“accessible to all on the basis of capacity,” and in the World Declaration on Higher Education “no one shall be denied access to higher education,” and so on. From an ideal perspective, such terminology would be adequate. Equality of access, in such basic terms, however, is not necessarily sufficient in addressing access for minorities and indigenous peoples, which reveals why most international instruments that underscore equal access for all also mention the option for states to apply relevant measures in addressing equitable access for these populations. This is wherein the problem lies, however. It is unclear as to what is implied or suggested by “appropriate,” “effective,” or “necessary” measures at the international level why it is left to the state to interpret what it means. International human rights law, therefore, has called upon states to balance unequal and inequitable conditions for their indigenous and minority populations through the adoption and implementation of relevant measures—temporary or permanent, but the emphasis on equity versus equality is highly skewed, as equality is addressed, but equity is not, leaving a void between aspirations of rights and their reality. In response, Brazil and New Zealand have dictated their respective solutions to the problem, and Iran’s mandates suggest there are no problems of inequality or inequity whatsoever, even in spite of its blatant omission of its largest religious minority and other religious minorities in its constitution.

International human rights law discourse on general access to higher education is scarce. Aside from some conventions and declarations calling for equal access on the basis of merit, others for individual capacity, and some even mentioning both as criteria, varying perceptions on the value and benefits of higher education are also coded in such language. There are also other inconsistencies regarding access to higher education such as whether or not it should be free, and whether quality is a matter of importance at the tertiary level. So

clearly, international instruments, over time, change in meaning, context, and language, even within and across binding or non-binding texts. These “shifts of emphasis” (UNESCO, 2000) not only surface questions such as “Are these rights truly ‘unalienable’?,” but they also force one to question if particular exceptions undermine the instruments or the international human rights framework as a whole. Therefore, how is it expected that states abide by such international standards if they are not “universally” or internationally understood as expected. Language, content, and formulation of international instruments is highly debated, questioned, and criticized among many states, which is why so many choose to submit reservations, declarations, and/or amendments to binding treaties they are party to, which not only reiterates the question of the legitimacy of international human rights, but also poses the question: What do “international” or “universal” standards look like, and do they coexist with “minimum” standards at the national level?

Like differentiating between levels of standards, the use of culturally-appropriate contexts also raises some questions. Using material or immaterial “artifacts” such as the use of language in the case of New Zealand’s higher education policy for Māori may have negative implications as perceived by the Māori community itself. Not only are terms such as “wānanga” and “Ka Hikitia” understood to be te reo Māori words, but they also become associated as slogans with New Zealand’s Māori higher education policy. Māori educator and scholar Rangi Nicholson (1997) applies Cooper’s (1985) theory to argue that New Zealand education policy that is laden with te reo words and phrases is successfully utilized as a marketing strategy to appeal solely to Māori, but how relevant is it really? It was not until 1987 that te reo became one of the country’s official languages, but according to the 2006 New Zealand Census, less than 30% of young Māori (15 years and under) can hold a

conversation in te reo, and 25% of Māori adults between the ages of 15 and 64 can hold a conversation in te reo. Nicholson (1997) and Cooper (1985) argue that applying the use of te reo in Māori-targeted policy and legislation is futile if most Māori and future generations are only fluent in English. Their critique is most likely based on the disconnect between cultural relevance and language usage (i.e., Māori words and phrases are grounded upon cultural meanings that lack a direct English equivalent (as common in most languages), so simply using te reo words as a substitute or translation of their English “equivalent” may completely discredit or dilute the original meaning and context of the te reo interpretation). The emphasis on sustaining and improving the quality of Māori language in Ka Hikitia may potentially reverse the downward trend, but only time will tell as the proportion of Māori English-only speakers to Māori bilingual speakers (of Māori and English) is significantly skewed.

Varying Understandings of Indigenous Peoples and Minority Groups

In addition to the widely debated “standard” definitions of minorities and indigenous peoples, it appears that states also have their own understandings of what such identities might characterize. This study also revealed a difference between national and international definitions of these particular groups and recognition of these respective populations and communities. As a matter of fact, minorities and indigenous peoples are never defined in international or national discourses. If anything, the closest to a definition of any group that surfaces in this study is Cobo’s (1982) explication of the unique identity characteristics of indigenous peoples in his general report on the discrimination against indigenous peoples and Capotorti’s (1991) definitions of minorities, but neither were adopted. This absence simply reveals there is still a prominent disagreement to define indigenous peoples and

minorities in spite of the vast diversity characteristic within and across such groups, but why is this the case? The report was written when indigenous peoples were still in the process of “gaining recognition” within international human rights—seven years prior to when ILO 169 was amended since it was first adopted in 1957. The first World Conference on Indigenous Peoples in 2014 marks significant strides in the area of indigenous rights within the UN System, but recognition of indigenous peoples is not necessarily authentic most of the time. Using the case of First Nations peoples in Canada, Coulthard (2007) argues indigenous peoples have “increasingly been cast in the language of ‘recognition’—recognition of cultural distinctiveness, recognition of an inherent right to self-government, recognition of state treaty obligations, and so on” (p. 437). At the national level, Brazil’s recognition of indigenous peoples is dominated by language addressing land tenure; Iran does not “recognize” any indigenous peoples or groups; and New Zealand denies the indigeneity of its Māori population by refusing to use any language that suggest or implies their aboriginal identities, and thus escaping international human rights language regarding indigenous peoples. Lightfoot (2010) also contends that recognition of indigenous peoples, *if* visible, is limited to “soft rights” and not “hard rights.” Coulthard’s (2007) theory on recognition is adapted from Taylor’s (1994) “politics of recognition,” which he explains as when “[one’s] identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer” (p. 25). Taylor further suggests “Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being” (p. 25). The absence and misrecognition of specific persons and groups, therefore, accommodates the exploitation of loopholes and misappropriation of legal measures to either progress or

hinder respective minority groups and indigenous peoples among other disadvantaged groups.

As determined by the language and tone of higher education policies in Brazil, Iran, and New Zealand, some countries are clearly more invested than others with regard to protecting their indigenous peoples and/or minorities' rights, such as in the case of Brazil, for instance (on paper, that is). Consequently, minority groups and indigenous peoples are identified differently within national boundaries or the presence and "recognition" of some underrepresented groups are amplified above others (i.e., Brazil's policy and laws are focused on low-income/poor/Afro-Brazilians/those mixed with Black/indigenous peoples; Iran defines only three religious minority categories: Zoroastrian, Jewish, and Christian; and New Zealand replicates the definition used in international human rights law—ethnic, national, religious, and linguistic minorities). So how does each national context play a role in influencing the understandings of disadvantaged groups? The broad, general understanding of how indigenous peoples and minorities are defined in international law becomes filtered according to state preferences, which can only widen the gap further, particularly if these communities are marginalized due to direct or indirect actions taken by the state itself. If there is no international or universal standard of how minorities and/or indigenous peoples are defined at the national levels, then clearly, there will be groups that will be unaccounted for, particularly in the case of Iran, where its Bahá'í population, numbering at more than 300,000 is non-existent according to "Islamic law." How can equal and equitable access to higher education of high quality be assured to *all* minorities and indigenous peoples who must be recognized and protected beyond the "political" and differentiated identities? Given the heterogeneity and vast diversity within and across both indigenous and minority

populations, a standardized definition at the international level may be irrelevant. At the national levels, however, states can and should make explicit definitions of particular populations, especially since there are distinct barriers and identifiable factors unique to respective individual and collective indigenous and minority communities. Therefore, the varying and common characteristics and experiences they share must be acknowledged and supported by the state.

Weak Coverage of Higher Education

In the introduction to this study, the lack of higher education discourse at the international level was discussed. Further analysis of the relevant discourses reveals that indeed higher education is hardly covered at all at the international level (especially within binding instruments). Instead, if higher education is addressed, it is mostly implied through rather passive references made such as “education at all levels,” and basic national-level discourses are not much different. So much emphasis is put on basic education and, at times, secondary education, but rarely, if ever, is higher education a matter of concern despite what growing scholarship on higher education and academia and the World Declaration on Higher Education and Framework for Priority Action illustrate. Nonetheless, more advanced and newly updated national legislation and policies targeting minorities and indigenous peoples do suggest that governments are noticing the effects of deprived higher education among their underrepresented populations, which in turn, has influenced such actions promoting or hindering their access. At the international level, content regarding higher education access for minorities and indigenous peoples, in particular (let alone disadvantaged groups, in general), is very vague and limited in scope and frequency, but the twentieth century definitely marked a paradigm shift, and the twenty-first century may be even more

promising given the growing number of supplemental reports and concurrent sessions held to address the right to higher education and the preservation of knowledge among indigenous and minority populations in particular. States have similarly shown more of an engaged commitment to promoting higher education as a more focused educational concern, but they have only emerged even more recently than at the international level. All three states only introduced higher education-specific legislation and policies for (or against) access for their respective underrepresented populations between the 1989 and 2014. What happens after the World Declaration on Higher Education and the Framework for Priority Action? Are states expected to inform future discourses at the international level? What of the national level? Will minorities and indigenous peoples be authentically consulted with and recognized in the process of maintaining their protected rights? These are only a few of the questions that may be considered.

Challenges of the Comparative Discourses

Clearly, there are challenges evident in the laws and policies presented in this study, and they address issues such as the evident missing link from the text or content of laws and policies to their interpretation and finally, their implementation; the paradox of minority and indigenous identities; and the inclusion of indigenous peoples and minorities in the consultation and drafting processes that yield such discourses.

Reading Between the Lines: From Interpretation to Implementation (and Obstacles to Implementation)

If contradicting and confusing language exists at the international level, imagine the challenges for states and policy makers in interpreting such language; and therefore, only more gaps are left for the actual interpretation and implementation of such policies.

Additionally, international human rights law is broad enough to accommodate various

interpretations, which leaves it open for misunderstandings and misuse, potentially resulting in detrimental measures for minorities and indigenous peoples directly affected by such policies (and indirectly majority/“dominant” populations in society). Schick (2006) argues that

Too much human rights discourse has focused on the codification of human rights norms rather than the ways they are implemented and the failure to enforce them. International liberalism celebrates the advent of human rights whilst failing to confront the deeper structural dilemmas that the international political economic system generates. An engagement with critical theory leads to new ways of seeing human rights that might lead to alternative understandings of politics at the global level” (p. 321).

Currently, there are no robust procedures mandated at the international or national level that require minorities and indigenous communities to be actively involved in the policymaking and law-drafting processes. As a matter of fact, despite clear explications of self-determination, self-preservation, and self-identification of indigenous peoples and persons belonging to minorities, and the need for consultation with indigenous peoples regarding their own communities, major gaps still exist between the nation and international law interpretation. For example, while Brazil’s quota law targets poor Afro-Brazilians and indigenous peoples, there is no indication of consultation with indigenous peoples, and the same is true of its National Education Plan; and as for New Zealand, although the state’s wānanga and te reo rhetoric are rather extensive, members of the Māori community are in no way mentioned to be formally involved or engaged in any of the state-level constitutional or policy measures regarding higher education. MTRG’s efforts (via their developed tertiary

education framework) are not even visibly adopted in tertiary legislation, strategies, or policies regarding Māori success at the tertiary level. So how relevant are these higher education measures if the intended recipients are absent from participating as of the inception of the process?

Although policies and legislation have been drafted and are or have been set to be implemented at the national level (influenced by international measures or not), they do not account for the structural barriers that prevent practical measures for access to higher education to be implemented. Granting indigenous peoples and minority groups access to higher education does not account for the various barriers that these underrepresented groups face in accessing higher education in the first place. Cross (1981) addresses three particular types of barriers that result in “non-participation” among particular persons and groups: situational barriers (relating to a person or group’s lived experience or context at a particular time), institutional or structural barriers (as established by learning institutions that either exclude or discourage participation of specific groups), and dispositional or psychosocial barriers (whereby individually held beliefs, values, attitudes or perceptions inhibit participation in organized learning activities). These kinds of barriers must also be acknowledged and removed through such policy or legislative measures in order for effective implementation of equal and equitable access for underrepresented groups to be fulfilled.

References to such barriers are directly linked to social justice theories and education for social change. There are indeed instances within both national and international discourses that address the capacity of higher education institutions to promote social change. They have the potential to contribute to the social, economic, cultural, moral, and spiritual advancement of societies and nations, even inter-generationally. However, the

effects of higher education on the populations it serves is absent from such discourses. The social justice component of the laws and policies discussed regarding access to higher education for indigenous peoples and minorities is not mentioned. For instance, how indigenous peoples and minority groups benefit from inclusive, participatory, or culturally-relevant learning is not at all justified in the contexts of specific measures. While the rights to access are addressed, the overall benefits to underrepresented groups are not. The focus of the benefits of higher education are limited to the state and its relationship to the international economic market. Thus, social justice practices are highly lacking within laws and policies aimed to focus on the most marginalized groups.

Finally, it is evident that policies, laws, and guidelines in print vary from one individual, institution, state, or group to another, especially in regards to varied interpretations of the text in question. How something is interpreted reflects and shapes how it is actually applied or implemented? How is the interpretation of policies or laws transferred from policymakers/law drafters/authors to the actual practitioners? This remains unclear in most of the discourses across both national and international spheres. The Framework for Priority Action included the closest thing to practice-based content, but the interpretation of such actions is more vague than specific.

If there is anything that critical discourse analysis (and interpretive policy analysis) can inform about such national and international discourses, it is that as time has evolved, such measures are adopting postcolonial rather than colonial frameworks, and they are more often drafted with well-intentioned goals in mind in spite of the current limitations and challenges they may have. As UN Secretary General Ban Ki-moon recalls of the 1993 Vienna conference,

[It] was an important milestone in humanity's quest for universal human rights. But we still have a long way to go to translate principle into practice. In too many places, for too many people, human rights and the rule of law are but a distant dream. Only when the inherent dignity and equal rights of all members of the human family are truly respected, can we expect freedom, justice and peace in this world" (United Nations, 2013, p. 5).

Secretary-General Ban Ki-moon's sentiments were also echoed by Navi Pillay, UN High Commissioner for Human Rights, who said: "We have seen much progress in the past two decades—but far more remains to be achieved. The promise of respect for the rights and dignity of all people remains an aspiration," and in regards to populations including those belonging to indigenous or minorities communities, Pillay stated that they "continue to be oppressed and excluded, their voices suppressed and their rights denied. Our work will continue, inspired by the Vienna Declaration and Programme of Action, until its promise is made real for all" (United Nations, 2013, p. 11).

The Paradox of Indigenous and Minority "Identities"

The international or universal right to self-determination for all peoples is rather problematic for persons belonging to minorities and indigenous peoples. To self-identify as a minority or indigenous person is intended to grant unique protections and rights within the context of international human rights instruments (that are not legally enforceable in the first place); but within the national context, minority and indigenous identities or self-identification have the potential to be contentious and contradictory, even exploitative. In Brazil, for instance, where a significant proportion of the population is of mixed race, and therefore, unaccustomed to racial or ethnic classifications, students are asked to classify

themselves as Black, indigenous, or of mixed race in order to qualify for the Lei de Cotas eligibility criteria. Iran's Constitution does not recognize any religious minorities outside of Zoroastrians, Jews, and Christians, thus denying the state's largest religious minority group—Bahá'ís—an opportunity to study or teach in universities if they identify themselves as such; by rejecting their Bahá'í identity, however, and accepting a Muslim identity, they are alternatively granted full access to higher education institutions in the country. How does a this resolve the disparity, however? How is this just? New Zealand's Māori comprise the dominant underrepresented group in the country, and words and phrases from their mother tongue are sprinkled about legislation and policies regarding their anticipated progress and status in higher education; yet their indigeneity remains unacknowledged by Parliament in spite of a evident dependence upon the socio-political implications of the Treaty of Waitangi in the post-colonial era. Identities are conflicted and in limbo. They become oppressive, but they are also empowering. They are rejected, adopted, and masked. The “politics of recognition” (Coulthard, 2007; Taylor, 1994) and “politics of difference” (Taylor, 1994) within national mandates threaten ideas of cosmopolitanism, pluralism, and unity in diversity assured in international instruments, yielding paradoxical identities that have the potential and capacity to further marginalize the marginalized and become oppressive. Alfred and Cornthassel (2005) contend that “Indigenous” identity “is this oppositional [to European colonization], place-based existence, along with the consciousness of being in struggle against the dispossessing and demeaning fact of colonization by foreign peoples, that fundamentally distinguishes Indigenous peoples from other peoples of the world” (p. 597). Perceiving indigenous or minority identities as “oppositional” connotes “colonizer-colonized,” “oppressor-oppressed,” “us-them” dichotomies suggesting that such identities

are shaped and framed by oppressive forces. Such a posture denies the origins of minority and indigenous peoples' cultural, social, economic, and moral customs and values that preceded colonial encounters, but it also suggests that identities of underrepresented groups (particularly indigenous peoples) have evolved and transformed because of these same historical events. Identities of indigenous peoples are not even recognized to the extent that minority identities are nationally and internationally.

Like Atalay (2006), the researcher-analyst claims that by using labels such as “minorities” or “minority groups,” “indigenous peoples,” or “disadvantaged,” “vulnerable,” “underrepresented,” “marginalized” peoples or groups, and so on denote broad, general groups of peoples and communities, each of which encompass a great deal of complexity and diversity of views. They are not “a monolithic, homogeneous group with rigid and clearly defined epistemologies and worldviews, but rather each includes a great deal of diversity” (p. 616). Furthermore, these labels are not intended to further marginalize peoples or communities that are underprivileged due to various factors of the greater contexts in which they live. It is assumed by the researcher, therefore, that those engaged in the drafting of international and national-level discourses likewise approached their higher education laws and policies specific to minorities and indigenous peoples with a similar understanding of the multi-faceted diversity within and across various minority and indigenous communities. Nonetheless, there is still a paradox in how minority and indigenous identities are “recognized” and celebrated. If people belonging to one or both of these communities self-identifies as a member of such a community, there is the potential risk of further marginalization and oppression. Therefore, the question arises, Should “indigenous peoples” and minorities be defined at all? If so, who actively participates in establishing such

definitions? Is self-identification sufficient? Is it empowering or problematic? How can indigenous peoples, minorities, and other disadvantaged groups claim their cultural, economic, social, and spiritual identities without allowing perpetrators of human rights violations to use those same identities as a motivation for their oppression in the first place? Furthermore, identities take on several meanings and priorities within discourses from state to state, from state to international, and from international to state levels.

The Ambiguity and Vagueness of International Human Rights and National Legislation and Policies

The standardization or universalization of human rights and particularly the right to higher education for indigenous peoples and minorities was introduced as one the strongest qualities of the international instruments reviewed in this study. In an effort to draft legislation and measures on an international platform, however, the language must not be too rigid nor confined so states still find its content to be applicable at the state or territorial level. Some of the language within international instruments, therefore, can easily be misinterpreted and taken out of context. International instruments and national instruments alike are typically ambiguous regarding issues and topics such as quality or standards. Meeting at least the “minimum” standards was a recurring theme in both national and international instruments regarding general education and higher education, but needing to define minimum standards seemed unquestionable until they were vaguely defined as “quantifiable” in LDB and more specifically as “multidimensional” in the World Declaration on Higher Education and Framework for Priority Action. The more ambiguous or vague the language and content of laws and policies are, the highly likely it is that they will be lost in translation, and consequently, in implementation as well.

Invisible Agents, Visible Voices

Since questions have already been posed regarding the voices that are both present and absent within national and international policies and laws addressing higher education rights for minorities and indigenous peoples, it may be helpful to reconsider who *is* and who *should be* participating in relevant policymaking and the drafting of laws. Currently, there are grassroots-organized groups in Brazil (Educafro, COIAB), Iran (BIC, BIHE), and New Zealand (Kohanga Rēo, Kura Kaupapa, Wharekura) that are each actively engaged in raising the standards of higher education rights and access for indigenous communities, minorities, and women, in particular. They have all played active and varying roles in mobilizing and advocating for higher educational rights for underrepresented groups. If policies and laws are targeting or aiming to serve an oppressed or marginalized segment of the nation's population, then perhaps their inclusion should also be acknowledged, as has been the case in a few of the relevant international instruments targeting minorities and indigenous peoples. At the recent WCIP, for example, select indigenous representatives from around the world were invited to participate in the approval of the final outcome document, and most (but not all) of their expectations were realized in the document. Despite the informal nature of the document, the voices of stakeholders were directly represented to some degree in the discourses during the conference. Some indigenous representatives indicated their disappointment with the fact that it was drafted prior to the conference and that the conference concurrently as the UN General Assembly was meeting for its High-Level Plenary Meeting of the 69th Session of the General Assembly, curbing the import of this inaugural conference (Sattarzadeh, 2014). The outcome document was drafted by a select number of representatives on a committee, including several indigenous peoples *prior to*

WCIP 2014. Per UN General Assembly protocol, state representatives had the exclusive authority and final say in deciding whether or not they wanted to accept the text submitted to the General Assembly. There is no indication if any of the international instruments or national laws and policies analyzed in this study included any representative stakeholders who would be directly and indirectly affected by their implementation. It is also unclear as to whether administrators, faculty, students, prospective students, activists or advocacy organizations, including members from indigenous and minority communities were invited to the proverbial table. Clearly, in Iran, members of the Bahá'í community were excluded from participating in any drafting or consulting processes, since inviting them would naturally contradict all the policies that were specifically written against them.

Thus who the actors were and within what structures and systems they were working are important factors that would have further enhanced the quality of the interpretation and findings. However, most of this information was unavailable and inaccessible to the researcher, and it becomes far more complex at the level of international human rights law when representatives from various regimes, systems, and structures “collaborate” on an international document that is believed to be intended to benefit and serve all. Thus the lens of actors in the drafting of international human rights instruments is far broader and macro in scope, whereas national authors focus solely on the nation, and to some degree, its relationship with other nations. Drafters of international instruments far outnumber those who draft national legislation, and their identities are far more ambiguous and transitory than at the national level. Whose voices are represented in these discourses, and whose voices are still missing? Who is included and who is excluded? Is the content of these documents very

clear and evident in order to appropriately and truthfully answer these questions? These questions remain unanswered.

Findings

To what extent is the right to higher education conveyed in international treaties/instruments and national policies and legislation? How are the higher educational rights of minority groups and indigenous peoples in particular addressed in international treaties/instruments and national policies and legislation?

One of the limitations already discussed is in regards to the right to higher education and its minimal focus in most international instruments and national constitutional documents. The drafting of the World Declaration on Higher Education and the Framework for Priority Action, the outcomes of the two subsequent conferences, and reports from the First Session of the Forum on Minority Issues and the World Conference on Indigenous Peoples reveal, however, that genuine discussions and concerns are ongoing and that the international-level commitment to higher education should not be taken lightly.

Furthermore, the major emphasis on the “multidimensional” nature of quality and its necessary linkage to relevance is the crucial determinant in guaranteeing equitable conditions for underrepresented groups within higher education institutions. The World Declaration on Higher Education sets a standard for higher education that has yet to be met nationally or internationally. The multifaceted configurations of higher education systems and structures and the various benefits they provides extended far beyond the typical human capital framework motivated by socioeconomic gains.

At the national level, references to higher education varied. Definitions or expectations of higher education institutions varied. Furthermore, unlike the broad or general references to higher education or tertiary education in international human rights

discourses, within national legislation and policy, there seem to be clear distinctions and hierarchies between various types of higher or tertiary levels of instruction. For instance, all three states have a distinct space for technical colleges or institutes, suggesting the importance of science and technology in the fields. Several international human rights instruments do address the imperativeness of advancing science and technology as well, and these states clearly mirror this sentiment. However, access based on the varying types of higher education institutions were not at all addressed in any of the laws or policies studied here. Instead, admissions policies were universally addressed or not at all (in the case of New Zealand, aside from minimum admissions criteria set in Education Act 1989, each institution sets its own requirements for admissions).

Higher education legislation initiatives in Brazil have rapidly erupted within the past 20 years. Building upon LDB in 1996, the landmark Supreme Court decision on Lei de Cotas calling for statewide quotas on 50% of all public universities and colleges throughout the state for underrepresented groups has critics and supporters waiting in anticipation to find out how the first 10 years will fare. This form of affirmative action symbolizes a dramatic shift in educational governance from what was formerly known as a highly decentralized system to a federally-mandated higher education law that regulates admissions and passes a standardized national education plan (PNE). PNE further is exemplary of a state-level plan for the unfoldment of the World Declaration in Higher Education and Framework for Priority Action. Its emphasis on the various aspects and features of higher education brings the international declaration to life on a micro, tangible level. Additionally, Brazil is the only state to have ratified ILO 169—the only legally binding treaty for the protection of indigenous and tribal peoples, but when dealing with the Lei de Cotas and other education-

related policies for indigenous peoples, members of the indigenous community are not involved in the decision-making and planning processes, nor consulted with. Failing to involve indigenous peoples in matters addressing the development of their own communities specific to the equal and equitable right to quality education (or any other civil, cultural, economic, social, or political right) is directly at odds with ILO 69 and the Declaration on the Rights of Indigenous Peoples.

Iranian policies and laws in the arena of higher education focus on sustainability of resources within the country. Most importantly, however, the specific policies and guidelines studied here reveal that Iran's perceptions of higher education are of high yet paradoxical standards, particularly because since the government systematically denies Bahá'ís access to higher education throughout the state. For a government to aspire to achieve self-reliance through socioeconomic means, while simultaneously discriminating against its largest religious population is a blatant contradiction of the state's understanding of human capital gains via higher education. Consequently, the state's higher education policies are flagrant violations of international human rights law discourses since members of the Bahá'í community are denied basic rights and remain unrecognized as Iranian citizens according to the Constitution.

New Zealand's uncoded constitution and supplementary higher education policy strategies emerged with a visible Māori "voice" from the mid-1970s onward. It is no surprise, therefore, that the state's laws and tertiary education policies for Māori have a strong foundation in quality language programs and promotion of wānanga as an alternative option for Māori students. There are only three wānanga in the country, but the state offers a variety of tertiary education options including polytechnics, universities, specialist schools,

and vocational colleges. Education Act 1989's mandate for a Tertiary Education Strategy (TES) requires that one of the long-term development goals focus on Māori educational advancement and maintaining cultural awareness. The emphasis on higher education for Māori in TES 2014-2019 parallels the overall strategy goal in promoting higher employment rates in the country in order to make New Zealand highly competitive in the global market, falling short of meeting other goals aside from economically-driven incentives. Ka Hikitia, a Māori-specific education strategy implements fundamental Māori principles across all levels of schooling. Although discrimination in higher education institutions is forbidden and equitable measures are permitted, New Zealand has not implemented any statewide legislation promoting equitable access for Māori to tertiary education organizations (TEOs) (aside from the establishment of wānanga). Rather, tertiary education initiatives for Māori students seem to be separate but parallel to the overall TES 2014-2019 goals and objectives.

How do international human rights discourses compare to country-level policies and strategies to protect minority groups and indigenous peoples' rights of equal and equitable access to quality higher education?

In most national and international discourses on the right to higher education, equal access to higher education was introduced more vaguely, thus excluding references or regard for specific segments of the population (i.e., minority groups and indigenous peoples). Equitable access, on the other hand, appeared to be more general in international instruments (vis-à-vis temporary or permanent measures), while in national-level discourses on higher education enrollment were expectedly more specific and relevant. Naturally, international instruments used more all-inclusive, ambiguous language (i.e., “measures” for disadvantaged groups, vulnerable populations, underserved, etc.), but there was consistency across international instruments that did mention equitable measures of some kind in

relation to higher education. At the national level, for the most part, there were specific references (depending on the type of legislation analyzed). The World Declaration on Higher Education specifically mentions that particular measures should be set in place, if necessary, for disadvantaged groups, while also stressing that equitable access to higher education will gradually evolve into *equal* access for all on the basis of individual capacity and merit.

Prior to Lei de Cotas, like many international instruments, Brazil's legislative language made it clear that equal access would be granted to all on the basis of individual capacity. In response to the grave disparities in higher education enrollments experienced by Afro-Brazilians and persons of mixed race, indigenous peoples, and persons from low income households, however, the government adopted Lei de Cotas, hoping to remedy its highly visible inequality landscape within public universities across the country. Since the law will not be fully implemented until 2016, it will take some time to assess if Lei de Cotas makes any difference in resolving enrollment and matriculation-related discrepancies. Understanding that academic success at the tertiary level is dependent upon achievement and matriculation at earlier levels of schooling, the government launched PNE, which aims to create a strong establishment between lower levels of schooling and higher education-level training and learning. Similar to the patterns found in international instruments, the state's emphasis on quality higher education became more pronounced and detailed with the introduction of newer legislation.

The national entrance examination in Iran is only accessible to persons who self-declare their religious identity as Muslim or one of the religious minorities recognized in the Constitution. Thus access to higher education in Iran, by default, is not equal, because access to the national entrance exam for admissions to higher education institutions is denied to

other religious minorities, including Bahá'ís. Furthermore, the government has mandated, in a confidential memorandum to all universities in the country that Bahá'ís are not to be admitted to universities or should be expelled if it is discovered they are Bahá'ís, and that their progress and development should be “blocked.” Bahá'í faculty are also prohibited from teaching at universities and colleges in the state. Thus there are no equal or equitable measures in place for Bahá'ís. Rather, they are systematically treated as unequal, and therefore, undeserving of equitable accommodations to higher education, which is why the Iranian and international Bahá'í community responded by establishing the unaccredited Bahá'í Institute for Higher Education (BIHE), serving as an alternative outlet for Bahá'ís to access higher levels of learning through the efforts of local and global volunteers who serve as administrators and faculty professors.

New Zealand's Education Act 1989 specifies that there are a set of basic minimum requirements for all to access a tertiary education organization (TEO), including citizenship and age requirements, for example—both of which allow for exceptions. In addition to the minimum requirements, students are required to meet institution-specific requirements. Thus, it seems that institutions vary in their admissions requirements, and therefore, they are absent from New Zealand's legislative or policy measures. Ka Hikitia emphasizes quality in one of its two “essential factors for success” strategy: “Quality provision, leadership, teaching and learning, supported by effective governance” (Ministry of Education, 2013). This “factor” is repeated on eight separate occasions throughout the policy strategy, but its interpretation and implications are left to the reader to deconstruct and read between the lines, as there are no concrete explanations to support what these areas of quality look like. Coupled with the second essential factor—

Strong engagement and contribution from students and those who are best placed to support them—parents and whānau, hapū, iwi, Māori organizations, communities and businesses—have a strong influence on students’ success. Māori students’ learning is strengthened when education professionals include a role for parents and whānau, hapū, iwi, and Māori organizations and communities in curriculum, teaching and learning (Ministry of Education, 2013)

—reveals that the import of familial and community identity among Māori is necessary in complementing the ambiguity of quality presented as the first essential factor of measuring Ka Hikitia’s success.

Conclusion

This study starts and ends with many unanswered questions, but there is nothing wrong with that, especially if such questions inspire further inquiry and scholarship regarding minorities and indigenous peoples’ equal and equitable access to quality higher education and other topics of a similar nature. For instance, how can we understand that granting equal and equitable access to tertiary education of high quality for disadvantaged groups not only benefits “them”/”others,” but everyone? How can the societal or global effects of minorities and indigenous peoples accessing and successfully completing quality-level postsecondary education be measured and/or studied? Perhaps the findings would inspire more action to promote such access (alternatively to privatized higher learning). Also, as a means of furthering the pluralism and diversity areas of scholarship, there are opportunities to explore the dynamics of minority and indigenous peoples and how their identities affect and inform the culture of higher education institutions. Likewise, how are their identities thwarted or muted?

Concerns regarding equal or equitable access to quality higher education for minorities and indigenous peoples (and other underrepresented groups) are only secondary to determining if and how these respective persons and groups are identified and recognized within national laws. If the full rights and identities of these populations are not fully recognized by the state—beyond the “politics of recognition” and the politics of difference”—obviously, they will be deprived of equal and equitable access to higher education of a high quality. Given the broad reference to “measures” at the international level and more specific measures at the national level specific to resolving unequal and inequitable access to higher education for minority and indigenous peoples, suggests that measures adopted reflect how these targeted groups are perceived. Since equitable measures are necessary in order to create equal opportunities for minorities and indigenous peoples who would otherwise be denied access to higher education, then it would be essential to address what equality and equity mean, how they relate to unique national-level contexts, and how they can be explained at the international level.

At a broader level, perhaps before even focusing on the rights of indigenous peoples and minorities to quality higher education is addressed, it may be more effective to assess how nations protect and promote the “basic” rights of their marginalized populations in the first place. Also, how do states perceive education and higher education at the national and international levels, and how are such perceptions reflected in their laws, policies, and practices? This knowledge may help us gain a better understanding of the status of such disadvantaged groups and learn what states are doing to support them and their existence and well-being. Finally, how closely linked are quality and relevance for such policies and legislative measures as they relate to minorities and indigenous peoples? If higher education

is of “high-quality,” does that mean it is relevant to the population its educational measure is intended for? Compared to national laws and policies, the potency of international instruments is far greater in words than in enforceability, particularly since the World Declaration on Human Rights and the Framework for Priority Action are the most thorough instruments that addresses equal and equitable access to higher education for minorities and indigenous peoples, while maintaining a strong emphasis on the need for coherence between relevance, quality, access, equity, and diversification. Although relevance was not a primary topic of concern upon partaking in this study, it was quickly discovered that without its consideration in the context of higher education, especially in relation to the indigenous and minority students targeted, a superior or high quality level of higher education would be impossible to achieve.

Based on the patterns revealed at the national and international levels thus far, there is a hope that such higher education policies that promote equal and equitable access to higher education of high quality for disadvantaged populations will only be improved and mature over time in order to address issues of equality, access, diversity, quality, and relevance in the long-term, just as the drafters of the World Declaration of Higher Education and Framework for Priority Action aspired to do. For instance, the difference between “hard law” and “soft law” instruments and their enforceability and mechanisms (or lack thereof) of state accountability needs to be improved. Also, ensuring that higher education-related discourse is relevant and customized to the population or peoples it is intended to serve (particularly if the target population is vulnerable) is crucial to the success of such higher education laws and policies.

There has to be some way to consider how to bridge the gap between authors or drafters of international and national laws and policies and government officials that interpret and implement them. In regards to some implications of these comparative discourses, several particular recommendations come to mind. First of all, perhaps there could be mechanisms in place for higher education institutions (and systems) to adopt a human rights culture that values the importance of all peoples and the benefits tertiary education can yield to all peoples and societies. Secondly, the UN System's current mechanism of Universal Periodic Review (UPR) procedures must be either improved or replaced in order to ensure that states are truly adhering to instruments they are signatories to (especially since reports are self-reported by the state in question and reviewed by a UPR council). The evaluation and monitoring process is a formalized system of ongoing (sometimes recycled) normative discussions. Third, the World Declaration on Higher Education suggests that equal and equitable access to higher education—in the international and national contexts—does not end and begin with access. As a matter of fact, it is a “lifelong” phenomena of entry and exit within higher education systems and institutions to not only accommodate marginalized peoples' access, but also adults and those without any prior schooling. Fourth, implicitly, international instruments and national laws and policies mostly or exclusively apply to public educational institutions. National laws and policies on education are also in control of public educational institutions, and therefore, public institutions take precedence regarding national measures, particularly as described in chapter 7 of this dissertation. What about the quality of privatized higher education? According to Levy (2010), privatized higher education (PHE) accounts for 31.3% globally. Consequently, a significant percentage of the population—mostly “privileged” socioeconomically—is

unaccounted for. How does disconnecting from private higher education institutions (in light of the mass higher education movement) limit the future of higher education as laid out in the World Declaration on Higher Education and Framework for Priority Action? Like public higher education institutions, private institutions must be equally held accountable for adopting a culture of human rights that extends far beyond the promotion of mass higher education and human capital. Lastly, such equal and equitable access is necessary in order for the inevitability of diversity to become a reality within higher education institutions and systems. Diversity in all aspects of higher education is required if it is to truly serve the diverse demands of an ever-evolving society.

Appendix

World Declaration on Higher Education for the Twenty-First Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education

adopted by the

World Conference on Higher Education

Higher Education in the Twenty-First Century:
Vision and Action

9 October 1998

World Declaration on Higher Education for the Twenty-First Century: Vision and Action

PREAMBLE

On the eve of a new century, there is an **unprecedented demand for and a great diversification in higher education, as well as an increased awareness of its vital importance for sociocultural and economic development**, and for building the future, for which the younger generations will need to be equipped with new skills, knowledge and ideals. Higher education includes ‘all types of studies, training or training for research at the post-secondary level, provided by universities or other educational establishments that are approved as institutions of higher education by the competent State authorities’. Everywhere higher education is faced with great challenges and difficulties related to financing, equity of conditions at access into and during the course of studies, improved staff development, skills-based training, enhancement and preservation of quality in teaching, research and services, relevance of programmes, employability of graduates, establishment of efficient co-operation agreements and equitable access to the benefits of international co-operation. At the same time, higher education is being challenged by new opportunities relating to technologies that are improving the ways in which knowledge can be produced, managed, disseminated, accessed and controlled. Equitable access to these technologies should be ensured at all levels of education systems.

The second half of this century will go down in the history of higher education as the period of its most spectacular **expansion**: an over sixfold increase in student enrolments worldwide, from 13 million in 1960 to 82 million in 1995. But it is also the period which has seen the gap between industrially developed, **the developing countries and in particular**

the least developed countries with regard to access and resources for higher learning and research, already enormous, becoming even wider. It has also been a period of increased socio-economic stratification and greater difference in educational opportunity within countries, including in some of the most developed and wealthiest nations. Without adequate higher education and research institutions providing a critical mass of skilled and educated people, no country can ensure genuine endogenous and sustainable development and, in particular, developing countries and least developed countries cannot reduce the gap separating them from the industrially developed ones. Sharing knowledge, international co-operation and new technologies can offer new opportunities to reduce this gap.

Higher education has given ample proof of its viability over the centuries and of its ability to change and to induce change and progress in society. Owing to the scope and pace of change, society has become increasingly **knowledge-based** so that higher learning and research now act as essential components of cultural, socio-economic and environmentally sustainable development of individuals, communities and nations. Higher education itself is confronted therefore with formidable challenges and must proceed to the most radical **change and renewal it has ever been required** to undertake, so that our society, which is currently undergoing a profound crisis of values, can transcend mere economic considerations and incorporate deeper dimensions of morality and spirituality.

It is with the aim of providing solutions to these challenges and of setting in motion a process of in-depth reform in higher education worldwide that UNESCO has convened a World Conference on Higher Education in the Twenty-First Century: Vision and Action. In preparation for the Conference, UNESCO issued, in 1995, its *Policy Paper for Change and Development in Higher Education*. Five regional consultations (Havana, November 1996; Dakar, April 1997; Tokyo, July 1997; Palermo, September 1997; and Beirut, March 1998) were subsequently held. The Declarations and Plans of Action adopted by them, each preserving its own specificity, are duly taken into account in the present Declaration - as is the whole process of reflection undertaken by the preparation of the World Conference - and are annexed to it.

*

* *

We, participants in the World Conference on Higher Education, assembled at UNESCO Headquarters in Paris, from 5 to 9 October 1998,

Recalling the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights,

Recalling also the Universal Declaration of Human Rights which states in Article 26, paragraph 1, that 'Everyone has the right to education' and that 'higher education shall be equally accessible to all on the basis of merit', and endorsing the basic principles of the Convention against Discrimination in Education (1960), which, by Article 4, commits the

States Parties to it to ‘make higher education equally accessible to all on the basis of individual capacity’,

Taking into account the recommendations concerning higher education of major commissions and conferences, *inter alia*, the International Commission on Education for the Twenty-First Century, the World Commission on Culture and Development, the 44th and 45th sessions of the International Conference on Education (Geneva, 1994 and 1996), the decisions taken at the 27th and 29th sessions of UNESCO’s General Conference, in particular regarding the Recommendation concerning the Status of Higher-Education Teaching Personnel, the World Conference on Education for All (Jomtien, Thailand, 1990), the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), the Conference on Academic Freedom and University Autonomy (Sinaia, 1992), the World Conference on Human Rights (Vienna, 1993), the World Summit for Social Development (Copenhagen, 1995), the fourth World Conference on Women (Beijing, 1995), the International Congress on Education and Informatics (Moscow, 1996), the World Congress on Higher Education and Human Resources Development for the Twenty-First Century (Manila, 1997), the fifth International Conference on Adult Education (Hamburg, 1997) and especially the Agenda for the Future under Theme 2 (Improving the conditions and quality of learning) stating: ‘We commit ourselves to ... opening schools, colleges and universities to adult learners ... by calling upon the World Conference on Higher Education (Paris, 1998) to promote the transformation of post-secondary institutions into lifelong learning institutions and to define the role of universities accordingly’,

Convinced that education is a fundamental pillar of human rights, democracy, sustainable development and peace, and shall therefore become accessible to all throughout life and that measures are required to ensure co-ordination and co-operation across and between the various sectors, particularly between general, technical and professional secondary and post-secondary education as well as between universities, colleges and technical institutions,

Believing that, in this context, the solution of the problems faced on the eve of the twenty-first century will be determined by the vision of the future society and by the role that is assigned to education in general and to higher education in particular,

Aware that on the threshold of a new millennium it is the duty of higher education to ensure that the values and ideals of a culture of peace prevail and that the intellectual community should be mobilized to that end,

Considering that a substantial change and development of higher education, the enhancement of its quality and relevance, and the solution to the major challenges it faces, require the strong involvement not only of governments and of higher education institutions, but also of all stakeholders, including students and their families, teachers, business and industry, the public and private sectors of the economy, parliaments, the media, the community, professional associations and society as well as a greater responsibility of higher education institutions towards society and accountability in the use of public and private, national or international resources,

Emphasizing that higher education systems should enhance their capacity to live with uncertainty, to change and bring about change, and to address social needs and to promote solidarity and equity; should preserve and exercise scientific rigour and originality, in a spirit of impartiality, as a basic prerequisite for attaining and sustaining an indispensable level of quality; and should place students at the centre of their concerns, **within a lifelong perspective**, so as to allow their full integration into the global knowledge society of the coming century,

Also believing that international co-operation and exchange are major avenues for advancing higher education throughout the world,

Proclaim the following:

MISSIONS AND FUNCTIONS OF HIGHER EDUCATION

Article 1 - Mission to educate, to train and to undertake research

We affirm that the core missions and values of higher education, in particular the mission to contribute to the sustainable development and improvement of society as a whole, should be preserved, reinforced and further expanded, namely, to:

(a) educate highly qualified graduates and responsible citizens able to meet the needs of all sectors of human activity, by offering relevant qualifications, including professional training, which combine high-level knowledge and skills, using courses and content continually tailored to the present and future needs of society;

(b) provide opportunities (*espace ouvert*) **for higher learning and for learning throughout life**, giving to learners an optimal range of choice and a flexibility of entry and exit points within the system, as well as an opportunity for individual development and social mobility in order **to educate for citizenship and for active participation in society**, with a worldwide vision, for endogenous capacity-building, and for the consolidation of human rights, sustainable development, democracy and peace, in a context of justice;

(c) **advance, create and disseminate knowledge** through **research** and provide, as part of its service to the community, relevant expertise to assist societies in cultural, social and economic development, promoting and developing scientific and technological research as well as research in the social sciences, the humanities and the creative arts;

(d) help **understand, interpret, preserve, enhance, promote and disseminate national and regional, international and historic cultures**, in a context of cultural pluralism and diversity;

(e) help protect and enhance **societal values** by training young people in the values which form the basis of democratic citizenship and by providing critical and detached perspectives

to assist in the discussion of strategic options and the reinforcement of humanistic perspectives;

(f) contribute to the development and improvement of education at all levels, including through the training of teachers.

Article 2 - Ethical role, autonomy, responsibility and anticipatory function

In accordance with the Recommendation concerning the Status of Higher-Education Teaching Personnel approved by the General Conference of UNESCO in November 1997, **higher education institutions and their personnel and students** should:

(a) preserve and develop their crucial functions, through the exercise of ethics and scientific and intellectual rigour in their various activities;

(b) be able to speak out on ethical, cultural and social problems completely independently and in full awareness of their responsibilities, exercising a kind of intellectual authority that society needs to help it to reflect, understand and act;

(c) enhance their critical and forward-looking functions, through continuing analysis of emerging social, economic, cultural and political trends, providing a focus for forecasting, warning and prevention;

(d) exercise their intellectual capacity and their moral prestige to defend and actively disseminate universally accepted values, including peace, justice, freedom, equality and solidarity, as enshrined in UNESCO's Constitution;

(e) enjoy full academic autonomy and freedom, conceived as a set of rights and duties, while being fully responsible and accountable to society;

(f) play a role in helping identify and address issues that affect the well-being of communities, nations and global society.

SHAPING A NEW VISION OF HIGHER EDUCATION

Article 3 - Equity of access

(a) In keeping with Article 26.1 of the Universal Declaration of Human Rights, admission to higher education should be based on the merit, capacity, efforts, perseverance and devotion, showed by those seeking access to it, and can take place in a lifelong scheme, at any time, with due recognition of previously acquired skills. As a consequence, no discrimination can be accepted in granting access to higher education on grounds of race, gender, language or religion, or economic, cultural or social distinctions, or physical disabilities.

(b) Equity of access to higher education should begin with the reinforcement and, if need be, the reordering of its links with all other levels of education, particularly with secondary education. Higher education institutions must be viewed as, and must also work within themselves to be a part of and encourage, a seamless system starting with early childhood and primary education and continuing through life. Higher education institutions must work in active partnership with parents, schools, students, socio-economic groups and communities. Secondary education should not only prepare qualified candidates for access to higher education by developing the capacity to learn on a broad basis but also open the way to active life by providing training on a wide range of jobs. However, access to higher education should remain open to those successfully completing secondary school, or its equivalent, or presenting entry qualifications, as far as possible, at any age and without any discrimination.

(c) As a consequence, the rapid and wide-reaching demand for higher education requires, where appropriate, **all policies concerning access to higher education** to give priority in the future to the approach based on the merit of the individual, as defined in Article 3(a) above.

(d) Access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities, must be actively facilitated, since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations. Special material help and educational solutions can help overcome the obstacles that these groups face, both in accessing and in continuing higher education.

Article 4 - Enhancing participation and promoting the role of women

(a) Although significant progress has been achieved to enhance the **access of women** to higher education, various socio-economic, cultural and political obstacles continue in many places in the world to impede their full access and effective integration. To overcome them remains an urgent priority in the renewal process for ensuring an equitable and non-discriminatory system of higher education based on the principle of merit.

(b) Further efforts are required to eliminate all gender stereotyping in higher education, to consider gender aspects in different disciplines and to consolidate women's participation at all levels and in all disciplines, in which they are under-represented and, in particular, to enhance their active involvement in decision-making.

(c) Gender studies (women's studies) should be promoted as a field of knowledge, strategic for the transformation of higher education and society.

(d) Efforts should be made to eliminate political and social barriers whereby women are under-represented and in particular to enhance their active involvement at policy and decision-making levels within higher education and society.

Article 5 - Advancing knowledge through research in science, the arts and humanities and the dissemination of its results

- (a) The advancement of knowledge through **research** is an essential function of all **systems** of higher education, which should promote postgraduate studies. **Innovation, interdisciplinarity and transdisciplinarity** should be promoted and reinforced in programmes with long-term orientations on social and cultural aims and needs. An appropriate balance should be established between basic and target-oriented research.
- (b) Institutions should ensure that all members of the academic community engaged in research are provided with appropriate training, resources and support. The intellectual and cultural rights on the results of research should be used to the benefit of humanity and should be protected so that they cannot be abused.
- (c) Research must be enhanced in all disciplines, including the social and human sciences, education (including higher education), engineering, natural sciences, mathematics, informatics and the arts within the framework of national, regional and international research and development policies. Of special importance is the enhancement of research capacities in higher education research institutions, as mutual enhancement of quality takes place when higher education and research are conducted at a high level within the same institution. These institutions should find the material and financial support required, from **both public and private sources**.

Article 6 - Long-term orientation based on relevance

- (a) **Relevance** in higher education should be assessed in terms of the fit between what society expects of institutions and what they do. This requires ethical standards, political impartiality, critical capacities and, at the same time, a better articulation with the problems of society and the world of work, **basing long-term orientations on societal aims and needs, including respect for cultures and environmental protection**. The concern is to provide access to both broad general education and targeted, career-specific education, often interdisciplinary, focusing on skills and aptitudes, both of which equip individuals to live in a variety of changing settings, and to be able to change occupations.
- (b) Higher education should **reinforce its role of service to society**, especially its activities aimed at eliminating poverty, intolerance, violence, illiteracy, hunger, environmental degradation and disease, mainly through an **interdisciplinary and transdisciplinary approach** in the analysis of problems and issues.
- (c) Higher education should enhance its contribution to the **development of the whole education system**, notably through improved teacher education, curriculum development and educational research.

(d) Ultimately, higher education should aim at the creation of a new society - non-violent and non-exploitative - consisting of highly cultivated, motivated and integrated individuals, inspired by love for humanity and guided by wisdom.

Article 7 - Strengthening co-operation with the world of work and analysing and anticipating societal needs

(a) In economies characterized by changes and the emergence of new production paradigms based on knowledge and its application, and on the handling of information, the links between higher education, the world of work and other parts of society should be strengthened and renewed.

(b) Links with the world of work can be strengthened, through the participation of its representatives in the governance of institutions, the increased use of domestic and international apprenticeship/work-study opportunities for students and teachers, the exchange of personnel between the world of work and higher education institutions and revised curricula more closely aligned with working practices.

(c) **As a lifelong source of professional training, updating and recycling**, institutions of higher education should systematically take into account trends in the world of work and in the scientific, technological and economic sectors. In order to respond to the work requirements, higher education systems and the world of work should jointly develop and assess learning processes, bridging programmes and prior learning assessment and recognition programmes, which integrate theory and training on the job. Within the framework of their anticipatory function, higher education institutions could contribute to the creation of new jobs, although that is not their only function.

(d) Developing entrepreneurial skills and initiative should become major concerns of higher education, in order to facilitate employability of graduates who will increasingly be called upon to be not only job seekers but also and above all to become job creators. Higher education institutions should give the opportunity to students to fully develop their own abilities with a sense of social responsibility, educating them to become full participants in democratic society and promoters of changes that will foster equity and justice.

Article 8 - Diversification for enhanced equity of opportunity

(a) Diversifying higher education models and recruitment methods and criteria is essential both to meet increasing international demand and to provide access to various delivery modes and to extend access to an ever-wider public, in a lifelong perspective, based on flexible entry and exit points to and from the system of higher education.

(b) More diversified systems of higher education are characterized by new types of tertiary institutions: public, private and non-profit institutions, amongst others. Institutions should be able to offer a wide variety of education and training opportunities: traditional degrees,

short courses, part-time study, flexible schedules, modularized courses, supported learning at a distance, etc.

Article 9 - Innovative educational approaches: critical thinking and creativity

(a) In a world undergoing rapid changes, there is a perceived need for a new vision and paradigm of higher education, which should be student-oriented, calling in most countries for in-depth reforms and an open access policy so as to cater for ever more diversified categories of people, and of its contents, methods, practices and means of delivery, based on new types of links and partnerships with the community and with the broadest sectors of society.

(b) Higher education institutions should educate students to become well informed and deeply motivated citizens, who can think critically, analyse problems of society, look for solutions to the problems of society, apply them and accept social responsibilities.

(c) To achieve these goals, it may be necessary to recast curricula, using new and appropriate methods, so as to go beyond cognitive mastery of disciplines. New pedagogical and didactical approaches should be accessible and promoted in order to facilitate the acquisition of skills, competences and abilities for communication, creative and critical analysis, **independent thinking and team work in multicultural contexts**, where creativity also involves combining traditional or local knowledge and know-how with advanced science and technology. **These recast curricula should take into account the gender dimension and the specific cultural, historic and economic context of each country.** The teaching of human rights standards and education on the needs of communities in all parts of the world should be reflected in the curricula of all disciplines, particularly those preparing for entrepreneurship. Academic personnel should play a significant role in determining the curriculum.

(d) New methods of education will also imply new types of teaching-learning materials. These have to be coupled with new methods of testing that will promote not only powers of memory but also powers of comprehension, skills for practical work and creativity.

Article 10 - Higher education personnel and students as major actors

(a) A vigorous policy of staff development is an essential element for higher education institutions. Clear policies should be established concerning higher education teachers, who nowadays need to focus on teaching students how to learn and how to take initiatives rather than being exclusively founts of knowledge. Adequate provision should be made for research and for updating and improving pedagogical skills, through appropriate staff development programmes, encouraging constant innovation in curriculum, teaching and learning methods, and ensuring appropriate professional and financial status, and **for excellence in research and teaching**, reflecting the corresponding provisions of the **Recommendation concerning the Status of Higher-Education Teaching Personnel approved by the General Conference of UNESCO in November 1997.** To

this end, more importance should be attached to international experience. Furthermore, in view of the role of higher education for lifelong learning, experience outside the institutions ought to be considered as a relevant qualification for higher educational staff.

(b) Clear policies should be established by all higher education institutions preparing teachers of early childhood education and for primary and secondary schools, providing stimulus for constant innovation in curriculum, best practices in teaching methods and familiarity with diverse learning styles. It is vital to have appropriately trained administrative and technical personnel.

(c) **National and institutional decision-makers should place students and their needs at the centre of their concerns**, and should consider them as major partners and responsible stakeholders in the renewal of higher education. This should include student involvement in issues that affect that level of education, in evaluation, the renovation of teaching methods and curricula and, in the institutional framework in force, in policy-formulation and institutional management. As students have the right to organize and represent themselves, students' involvement in these issues should be guaranteed.

(d) Guidance and counselling services should be developed, in co-operation with student organizations, in order to assist students in the transition to higher education at whatever age and to take account of the needs of ever more diversified categories of learners. Apart from those entering higher education from schools or further education colleges, they should also take account of the needs of those leaving and returning in a lifelong process. Such support is important in ensuring a good match between student and course, reducing drop-out. Students who do drop out should have suitable opportunities to return to higher education if and when appropriate.

FROM VISION TO ACTION

Article 11 - Qualitative evaluation

(a) **Quality in higher education is a multidimensional concept**, which should embrace all its functions, and activities: teaching and academic programmes, research and scholarship, staffing, students, buildings, facilities, equipment, services to the community and the academic environment. Internal self-evaluation and external review, conducted openly by independent specialists, if possible with international expertise, are vital for enhancing quality. Independent national bodies should be established and comparative standards of quality, recognized at international level, should be defined. **Due attention should be paid to specific institutional, national and regional contexts in order to take into account diversity and to avoid uniformity.** Stakeholders should be an integral part of the institutional evaluation process.

(b) Quality also requires that higher education should be characterized by its international dimension: exchange of knowledge, interactive networking, mobility of teachers and

students, and international research projects, while taking into account the national cultural values and circumstances.

(c) To attain and sustain national, regional or international quality, certain components are particularly relevant, notably careful selection of staff and continuous staff development, in particular through the promotion of appropriate programmes for academic staff development, including teaching/learning methodology and mobility between countries, between higher education institutions, and between higher education institutions and the world of work, as well as student mobility within and between countries. The new information technologies are an important tool in this process, owing to their impact on the acquisition of knowledge and know-how.

Article 12 - The potential and the challenge of technology

The rapid breakthroughs in new information and communication technologies will further change the way knowledge is developed, acquired and delivered. It is also important to note that the new technologies offer opportunities to innovate on course content and teaching methods and to widen access to higher learning. However, it should be borne in mind that new information technology does not reduce the need for teachers but changes their role in relation to the learning process and that the continuous dialogue that converts information into knowledge and understanding becomes fundamental. Higher education institutions should lead in drawing on the advantages and potential of new information and communication technologies, ensuring quality and maintaining high standards for education practices and outcomes in a spirit of openness, equity and international co-operation by:

(a) engaging in networks, technology transfer, capacity-building, developing teaching materials and sharing experience of their application in teaching, training and research, making knowledge accessible to all;

(b) creating new learning environments, ranging from distance education facilities to complete virtual higher education institutions and systems, capable of bridging distances and developing high-quality systems of education, thus serving social and economic advancement and democratization as well as other relevant priorities of society, while ensuring that these virtual education facilities, based on regional, continental or global networks, function in a way that respects cultural and social identities;

(c) noting that, in making full use of information and communication technology (ICT) for educational purposes, particular attention should be paid to removing the grave inequalities which exist among and also within the countries of the world with regard to access to new information and communication technologies and to the production of the corresponding resources;

(d) adapting ICT to national, regional and local needs and securing technical, educational, management and institutional systems to sustain it;

(e) facilitating, through international co-operation, the identification of the objectives and interests of all countries, particularly the developing countries, equitable access and the strengthening of infrastructures in this field and the dissemination of such technology throughout society;

(f) closely following the evolution of the 'knowledge society' in order to ensure high quality and equitable regulations for access to prevail;

(g) taking the new possibilities created by the use of ICTs into account, while realizing that it is, above all, institutions of higher education that are using ICTs in order to modernize their work, and not ICTs transforming institutions of higher education from real to virtual institutions.

Article 13 - Strengthening higher education management and financing

(a) The management and financing of higher education require the **development of appropriate planning and policy-analysis capacities** and strategies, based on partnerships established between higher education institutions and state and national planning and co-ordination bodies, so as to secure appropriately streamlined management and the cost-effective use of resources. Higher education institutions should adopt **forward-looking management practices** that respond to the needs of their environments. Managers in higher education must be responsive, competent and able to evaluate regularly, by internal and external mechanisms, the effectiveness of procedures and administrative rules.

(b) Higher education institutions must be given autonomy to manage their internal affairs, but with this autonomy must come clear and transparent accountability to the government, parliament, students and the wider society.

(c) The ultimate goal of management should be to enhance the institutional mission by ensuring high-quality teaching, training and research, and services to the community. This objective requires **governance that combines social vision, including understanding of global issues, with efficient managerial skills**. Leadership in higher education is thus a major social responsibility and can be significantly strengthened through dialogue with all stakeholders, especially teachers and students, in higher education. The participation of teaching faculty in the governing bodies of higher education institutions should be taken into account, within the framework of current institutional arrangements, bearing in mind the need to keep the size of these bodies within reasonable bounds.

(d) The promotion of North-South co-operation to ensure the necessary financing for strengthening higher education in the developing countries is essential.

Article 14 - Financing of higher education as a public service

The funding of higher education requires both public and private resources. The role of the state remains essential in this regard.

(a) The diversification of funding sources reflects the support that society provides to higher education and must be further strengthened to ensure the development of higher education, increase its efficiency and maintain its quality and relevance. **Public support for higher education and research remains essential** to ensure a balanced achievement of educational and social missions.

(b) Society as a whole must support education at all levels, including higher education, given its role in promoting sustainable economic, social and cultural development. **Mobilization for this purpose depends on public awareness and involvement of the public and private sectors** of the economy, parliaments, the media, governmental and non-governmental organizations, students as well as institutions, families and all the social actors involved with higher education.

Article 15 - Sharing knowledge and know-how across borders and continents

(a) The principle of solidarity and true partnership amongst higher education institutions worldwide is crucial for education and training in all fields that encourage an understanding of global issues, the role of democratic governance and skilled human resources in their resolution, and the need for living together with different cultures and values. The practice of multilingualism, faculty and student exchange programmes and institutional linkage to promote intellectual and scientific co-operation should be an integral part of all higher education systems.

(b) The principles of international co-operation based on solidarity, recognition and mutual support, true partnership that equitably serves the interests of the partners and the value of sharing knowledge and know-how across borders should govern relationships among higher education institutions in both developed and developing countries and should benefit the least developed countries in particular. Consideration should be given to the need for safeguarding higher education institutional capacities in regions suffering from conflict or natural disasters. Consequently, an international dimension should permeate the curriculum, and the teaching and learning processes.

(c) Regional and international normative instruments for the recognition of studies should be ratified and implemented, including certification of the skills, competences and abilities of graduates, making it easier for students to change courses, in order to facilitate mobility within and between national systems.

Article 16 - From 'brain drain' to 'brain gain'

The 'brain drain' has yet to be stemmed, since it continues to deprive the developing countries and those in transition, of the high-level expertise necessary to accelerate their socio-economic progress. International co-operation schemes should be based on long-term

partnerships between institutions in the South and the North, and also promote South-South co-operation. Priority should be given to training programmes in the developing countries, in centres of excellence forming regional and international networks, with short periods of specialized and intensive study abroad. Consideration should be given to creating an environment conducive to attracting and retaining skilled human capital, either through national policies or international arrangements to facilitate the return - permanent or temporary - of highly trained scholars and researchers to their countries of origin. At the same time, efforts must be directed towards a process of 'brain gain' through collaboration programmes that, by virtue of their international dimension, enhance the building and strengthening of institutions and facilitate full use of endogenous capacities. Experience gained through the UNITWIN/UNESCO Chairs Programme and the principles enshrined in the regional conventions on the recognition of degrees and diplomas in higher education are of particular importance in this respect.

Article 17 - Partnership and alliances

Partnership and alliances amongst stakeholders - national and institutional policy-makers, teaching and **related** staff, researchers and students, and administrative and technical personnel in institutions of higher education, the world of work, community groups - is a powerful force in managing change. Also, non-governmental organizations are key actors in this process. Henceforth, **partnership, based on common interest, mutual respect and credibility, should be a prime matrix for renewal in higher education.**

We, the participants in the World Conference on Higher Education, adopt this Declaration and reaffirm the right of all people to education and the right of access to higher education based on individual merit and capacity;

We pledge to act together within the frame of our individual and collective responsibilities, by taking all necessary measures in order to realize the principles concerning higher education contained in the Universal Declaration of Human Rights and in the Convention against Discrimination in Education;

We solemnly reaffirm our commitment to peace. To that end, we are determined to accord high priority to education for peace and to participate in the celebration of the International Year for the Culture of Peace in the year 2000;

We adopt, therefore, this World Declaration on Higher Education for the Twenty-First Century: Vision and Action. To achieve the goals set forth in this Declaration and, in particular, for immediate action, we agree on the following Framework for Priority Action for Change and Development of Higher Education.

I. PRIORITY ACTIONS AT NATIONAL LEVEL

1. States, including their governments, parliaments and other decision-makers, should:

- (a) establish, where appropriate, the legislative, political and financial framework for the reform and further development of higher education, in keeping with the terms of the Universal Declaration of Human Rights, which establishes that **higher education shall be 'accessible to all on the basis of merit'. No discrimination can be accepted**, no one can be excluded from higher education or its study fields, degree levels and types of institutions on grounds of race, gender, language, religion, or age or because of any economic or social distinctions or physical disabilities;
- (b) reinforce the links between higher education and research;
- (c) consider and use higher education as a catalyst for the entire education system;
- (d) develop higher education institutions to include lifelong learning approaches, giving learners an optimal range of choice and a flexibility of entry and exit points within the system, and redefine their role accordingly, which implies the development of open and continuous access to higher learning and the need for bridging programmes and prior learning assessment and recognition;
- (e) make efforts, when necessary, to establish close links between higher education and research institutions, taking into account the fact that education and research are two closely related elements in the establishment of knowledge;
- (f) develop innovative schemes of collaboration between institutions of higher education and different sectors of society to ensure that higher education and research programmes effectively contribute to local, regional and national development;
- (g) fulfil their commitments to higher education and be accountable for the pledges adopted with their concurrence, at several forums, particularly over the past decade, with regard to human, material and financial resources, human development and education in general, and to higher education in particular;
- (h) have a policy framework to ensure new partnerships and the involvement of all relevant stakeholders in all aspects of higher education: the evaluation process, including curriculum and pedagogical renewal, and guidance and counselling services; and, in the framework of existing institutional arrangements, policy-making and institutional governance;
- (i) **define and implement policies to eliminate all gender stereotyping in higher education** and to consolidate women's participation at all levels and in all disciplines in

which they are under-represented at present and, in particular, to enhance their active involvement in decision-making;

(j) **establish clear policies concerning higher education teachers**, as set out in the Recommendation concerning the Status of Higher-Education Teaching Personnel approved by the General Conference of UNESCO in November 1997;

(k) recognize students as the centre of attention of higher education, and one of its stakeholders. They should be involved, by means of adequate institutional structures, in the renewal of their level of education (including curriculum and pedagogical reform), and policy decision, in the framework of existing institutional arrangements;

(l) recognize that students have the right to organize themselves autonomously;

(m) promote and facilitate national and international mobility of teaching staff and students as an essential part of the quality and relevance of higher education;

(n) provide and ensure those conditions necessary for the exercise of academic freedom and institutional autonomy so as to allow institutions of higher education, as well as those individuals engaged in higher education and research, to fulfil their obligations to society.

2. States in which enrolment in higher education is low by internationally accepted comparative standards should strive to ensure a level of higher education adequate for relevant needs in the public and private sectors of society and to establish plans for diversifying and expanding access, particularly benefiting all minorities and disadvantaged groups.

3. The interface with general, technical and professional secondary education should be reviewed in depth, in the context of lifelong learning. Access to higher education in whatever form must remain open to those successfully completing secondary education or its equivalent or meeting entry qualifications at any age, while creating gateways to higher education, especially for older students without any formal secondary education certificates, by attaching more importance to their professional experience. However, **preparation for higher education should not be the sole or primary purpose of secondary education, which should also prepare for the world of work**, with complementary training whenever required, in order to provide knowledge, capacities and skills for a wide range of jobs. The concept of bridging programmes should be promoted to allow those entering the job market to return to studies at a later date.

4. **Concrete steps should be taken to reduce the widening gap between industrially developed and developing countries, in particular the least developed countries, with regard to higher education and research.** Concrete steps are also needed to encourage increased co-operation between countries at all levels of economic development with regard to higher education and research. Consideration should be given to making budgetary provisions for that purpose, and developing mutually beneficial agreements involving

industry, national as well as international, in order to sustain co-operative activities and projects through appropriate incentives and funding in education, research and the development of high-level experts in these countries.

II. PRIORITY ACTIONS AT THE LEVEL OF SYSTEMS AND INSTITUTIONS

5. Each higher education institution should define its mission according to the present and future needs of society and base it on an awareness of the fact that higher education is essential for any country or region to reach the necessary level of sustainable and environmentally sound economic and social development, cultural creativity nourished by better knowledge and understanding of the cultural heritage, higher living standards, and internal and international harmony and peace, based on human rights, democracy, tolerance and mutual respect. These missions should incorporate the concept of academic freedom set out in the Recommendation concerning the Status of Higher-Education Teaching Personnel approved by the General Conference of UNESCO in November 1997.

6. In establishing priorities in their programmes and structures, higher education institutions should:

(a) take into account the need to abide by the rules of ethics and scientific and intellectual rigour, and the multidisciplinary and transdisciplinary approach;

(b) be primarily concerned to establish systems of access for the benefit of all persons who have the necessary abilities and motivations;

(c) use their autonomy and high academic standards to contribute to the sustainable development of society and to the resolution of the issues facing the society of the future. They should develop their capacity to give forewarning through the analysis of emerging social, cultural, economic and political trends, approached in a multidisciplinary and transdisciplinary manner, giving particular attention to:

high quality, a clear sense of the social pertinence of studies and their anticipatory function, based on scientific grounds;

knowledge of fundamental social questions, in particular related to the elimination of poverty, to sustainable development, to intercultural dialogue and to the shaping of a culture of peace;

the need for close connection with effective research organizations or institutions that perform well in the sphere of research;

the development of the whole education system in the perspective of the recommendations and the new goals for education as set out in the 1996 report to UNESCO of the International Commission on Education for the Twenty-first Century;

fundamentals of human ethics, applied to each profession and to all areas of human endeavour;

(d) ensure, especially in universities and as far as possible, that faculty members participate in teaching, research, tutoring students and steering institutional affairs;

(e) take all necessary measures to reinforce their service to the community, especially their activities aimed at eliminating poverty, intolerance, violence, illiteracy, hunger and disease, through an interdisciplinary and transdisciplinary approach in the analysis of challenges, problems and different subjects;

(f) **set their relations with the world of work on a new basis** involving effective partnerships with all social actors concerned, starting from a reciprocal harmonization of action and the search for solutions to pressing problems of humanity, all this within a framework of responsible autonomy and academic freedoms;

(g) ensure high quality of international standing, **consider accountability and** both internal and external **evaluation**, with due respect for autonomy and academic freedom, **as being normal and inherent in their functioning**, and institutionalize transparent systems, structures or mechanisms specific thereto;

(h) as lifelong education requires academic staff to update and improve their teaching skills and learning methods, even more than in the present systems mainly based on short periods of higher teaching, establish appropriate academic staff development structures and/or mechanisms and programmes;

(i) **promote and develop research, which is a necessary feature of all higher education systems**, in all disciplines, including the human and social sciences and arts, given their relevance for development. Also, research on higher education itself should be strengthened through mechanisms such as the UNESCO/UNU Forum on Higher Education and the UNESCO Chairs in Higher Education. Objective, timely studies are needed to ensure continued progress towards such key national objectives as access, equity, quality, relevance and diversification;

(j) remove **gender inequalities and biases in curricula and research**, and take all appropriate measures to ensure balanced representation of both men and women among students and teachers, at all levels of management;

(k) **provide**, where appropriate, **guidance and counselling, remedial courses, training in how to study and other forms of student support**, including measures to improve student living conditions.

7. While the need for closer links between higher education and the world of work is important worldwide, it is particularly vital for the developing countries and especially the least developed countries, given their low level of economic development. Governments of

these countries should take appropriate measures to reach this objective through appropriate measures such as strengthening institutions for higher/professional/vocational education. At the same time, international action is needed in order to help establish joint undertakings between higher education and industry in these countries. It will be necessary to give consideration to ways in which higher education graduates could be supported, through various schemes, following the positive experience of the micro-credit system and other incentives, in order to start small- and medium-size enterprises. At the institutional level, developing entrepreneurial skills and initiative should become a major concern of higher education, in order to facilitate employability of graduates who will increasingly be required not only to be job-seekers but to become job-creators.

8. The use of new technologies should be generalized to the greatest extent possible to help higher education institutions, to reinforce academic development, to widen access, to attain universal scope and to extend knowledge, as well as to facilitate education throughout life. Governments, educational institutions and the private sector should ensure that informatics and communication network infrastructures, computer facilities and human resources training are adequately provided.

9. Institutions of higher education should be open to adult learners:

- (a) by developing coherent mechanisms to recognize the outcomes of learning undertaken in different contexts, and to ensure that credit is transferable within and between institutions, sectors and states;
- (b) by establishing joint higher education/community research and training partnerships, and by bringing the services of higher education institutions to outside groups;
- (c) by carrying out interdisciplinary research in all aspects of adult education and learning with the participation of adult learners themselves;
- (d) by creating opportunities for adult learning in flexible, open and creative ways.

III. ACTIONS TO BE TAKEN AT INTERNATIONAL LEVEL AND, IN PARTICULAR, TO BE INITIATED BY UNESCO

10. Co-operation should be conceived of as an integral part of the institutional missions of higher education institutions and systems. Intergovernmental organizations, donor agencies and non-governmental organizations should extend their action in order to develop inter-university co-operation projects in particular through twinning institutions, based on solidarity and partnership, as a means of bridging the gap between rich and poor countries in the vital areas of knowledge production and application. Each institution of higher education should envisage the creation of an appropriate structure and/or mechanism for promoting and managing international co-operation.

11. UNESCO, and other intergovernmental organizations and non-governmental organizations active in higher education, the states through their bilateral and multilateral co-operation programmes, the academic community and all concerned partners in society should further **promote international academic mobility** as a means to advance knowledge and knowledge-sharing in order to bring about and promote solidarity as a main element of the global knowledge society of tomorrow, including through strong support for the joint work plan (1999-2005) of the six intergovernmental committees in charge of the application of the regional conventions on the recognition of studies, degrees and diplomas in higher education and through large-scale co-operative action involving, *inter alia*, the establishment of an educational credit transfer scheme, with particular emphasis on South-South co-operation, the needs of the least developed countries and of the small states with few higher education institutions or none at all.

12. Institutions of higher education in industrialized countries should strive to make arrangements for international co-operation with sister institutions in developing countries and in particular with those of poor countries. In their co-operation, the institutions should make efforts to ensure fair and just recognition of studies abroad. UNESCO should take initiatives to develop higher education throughout the world, setting itself clear-cut goals that could lead to tangible results. One method might be to implement projects in different regions renewing efforts towards creating and/or strengthening centres of excellence in developing countries, in particular through the UNITWIN/UNESCO Chairs Programme, relying on networks of national, regional and international higher education institutions.

13. UNESCO, together with all concerned parts of society, should also undertake action in order to **alleviate the negative effects of 'brain drain' and to shift to a dynamic process of 'brain gain'**. An overall analysis is required in all regions of the world of the causes and effects of brain drain. **A vigorous campaign** should be launched **through the concerted effort of the international community** and on the basis of academic solidarity and should encourage the return to their home country of expatriate academics, as well as the involvement of **university volunteers** - newly retired academics or young academics at the beginning of their career - who wish to teach and undertake research at higher education institutions in developing countries. At the same time it is essential to support the developing countries in their efforts to build and strengthen their own educational capacities.

14. Within this framework, UNESCO should:

(a) **promote better co-ordination among intergovernmental, supranational and non-governmental organizations, agencies and foundations that sponsor existing programmes and projects for international co-operation in higher education.** Furthermore, co-ordination efforts should take place in the context of national priorities. This could be conducive to the pooling and sharing of resources, avoid overlapping and promote better identification of projects, greater impact of action and increased assurance of their validity through collective agreement and review. Programmes aiming at the rapid transfer of knowledge, supporting institutional development and establishing centres of excellence in all areas of knowledge, in particular for peace education,

conflict resolution, human rights and democracy, should be supported by institutions and by public and private donors;

(b) jointly with the United Nations University and with National Commissions and various intergovernmental and non-governmental organizations, become a forum of reflection on higher education issues aiming at: (i) preparing update reports on the state of knowledge on higher education issues in all parts of the world; (ii) promoting innovative projects of training and research, intended to enhance the specific role of higher education in lifelong education; (iii) reinforcing international co-operation and emphasizing the role of higher education for citizenship education, sustainable development and peace; and (iv) facilitating exchange of information and establishing, when appropriate, a database on successful experiences and innovations that can be consulted by institutions confronted with problems in their reforms of higher education;

(c) take specific action to support institutions of higher education in the least developed parts of the world and in regions suffering the effects of conflict or natural disasters;

(d) make renewed efforts towards creating or/and strengthening centres of excellence in developing countries;

(e) take the initiative to draw up an international instrument on academic freedom, autonomy and social responsibility in connection with the Recommendation concerning the Status of Higher-Education Teaching Personnel;

(f) ensure follow-up to the World Declaration on Higher Education and the Framework for Priority Action, jointly with other intergovernmental and non-governmental organizations and with all higher education stakeholders, including the United Nations University, the NGO Collective Consultation on Higher Education and the UNESCO Student Forum. It should have a crucial role in promoting international co-operation in the field of higher education in implementing this follow-up. Consideration should be given to according priority to this in the development of UNESCO's next draft Programme and Budget.

Bibliography

- 3 News. (2014, October 2). Warriors included in \$6M Maori education scandal. *3 News*. Retrieved from <http://www.3news.co.nz/nznews/warriors-included-in-6m-maori-education-scandal-2014100209>
- AIHEC. (2015). American Indian higher education consortium. Retrieved from <http://www.aihec.org/>
- Adediji, O. S., & Campbell, O. A. (2013). The role of higher education in human capital development. Retrieved from <http://dx.doi.org/10.2139/ssrn.2380878>
- Admon, N. (2005). Minority access to higher education and its social outcomes.
- Advisory Committee on the Framework Convention for the Protection of National Minorities. (2006). *Commentary on education under the framework convention for the protection of national minorities*. Retrieved from http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/pdf_commentaryeducation_en.pdf
- Affolter, F. W. (2005). The specter of ideological genocide: The Bahá'ís of Iran. In *War Crimes, Genocide and Crimes Against Humanity* 1(1), 75–114.
- Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and Opposition*, 40(4), 597-614.
- Alston, P. G. (2005). Ships passing in the night: The current state of the human rights and development debate seen through the lens of the Millennium Development Goals. *Human Rights Quarterly*, 27(3), 755-829.
- Altbach, P. (1998). *Comparative higher education: Knowledge, the university, and development*. Greenwich: Ablex Publishing Corporation.
- Altbach, P. G. (2010). Access means inequality. In *International Higher Education*, (61), 3-5.
- Altbach, P. G. (2013). *The international imperative in higher education*. Rotterdam, The Netherlands: Sense Publishers.
- An-Na'im, A. (2004). To affirm the full human rights standing of economic, social and cultural rights. In Y. Ghai & J. Cottrell (Eds.), *Economic, social and cultural rights: The role of judges in implementing economic, social and cultural rights*. London: Interights.
- An-Na'im, A. (2009). Abdullahi An-Na'im. In W. Twining (Ed.), *Human rights, Southern voices: Francis Deng, Abdullahi An-Naim, Yash Ghai and Upendra Baxi* (pp. 53-103). Cambridge: Cambridge University Press.

- Apple, M. (2004). *Ideology and curriculum* (3rd ed.). New York, NY: Routledge.
- Archer, L., Hutchings, M., & Ross, A. (2003). *Higher education and social class: Issues of exclusion and inclusion*. New York, NY: RoutledgeFalmer.
- Asher, J., Banks, D., & Scheuren, F. J. (Eds.). (2008). *Statistical methods for human rights*. New York, NY: Springer Science+Business Media, LLC.
- Ashforth, B. E., & Mael, F. (1989). Social identity theory and the organization. *Academy of Management Review*, 14(1), 20-39.
- Atalay, S. (2006). No sense of the struggle: Creating a context for survivance at the NMAI. In *American Indian Quarterly*, 30(3 & 4), 597-618.
- Atkinson, A.B., & Marlier, E. (2010). Analysing and measuring social inclusion in a global context. New York, NY: United Nations Department of Social and Economic Affairs. Retrieved from <http://www.un.org/esa/socdev/publications/measuring-social-inclusion.pdf>
- Ayers, W., Quinn, T., & Stovall, D. (Eds.). (2009). *Handbook of social justice in education*. New York, NY: Routledge.
- Bagchi, S. S., & Das, A. (2013). *Human rights and the third world: Issues and discourses*. Lanham, Maryland: Lexington Books.
- Bahá'í International Community. (1990). *Education: A Bahá'í perspective*. Leicestershire: Bahá'í Publishing Trust.
- Bahá'í International Community. (2005). *Closed doors: Iran's campaign to deny higher education to Bahá'ís*. New York, NY: Bahá'í International Community.
- Bahá'í International Community. (2008). *The Bahá'í question: Cultural cleansing in Iran*. New York: Bahá'í International Community.
- Banks, J., & McGee Banks, C.A. (2003). *Handbook of research on multicultural education*. San Francisco, CA: Jossey-Bass.
- Barnett, R. (1993). Knowledge, higher education and society: A postmodern problem. *Oxford Review of Education*, 19(1), 33-46.
- Barney Pityana, N. (2010). Higher education, transformation and Africanisation. Retrieved from http://www.ieasa.studysa.org/resources/Study_SA/trasformation_Africanisation.pdf

- Barreto, J. (Ed.). (2013). *Human rights from a third world perspective: Critique, history and international law*. Newcastle, UK: Cambridge Scholars Publishing.
- Basit, T. N., & Tomlinson, S. (2012). *Social inclusion and higher education*. Chicago, IL: University of Chicago Press.
- Bates, T. (2009). A report on UNESCO's 2009 World Conference on Higher Education. Retrieved from <http://www.tonybates.ca/2009/07/07/a-report-on-unescos-2009-world-conference-on-higher-education/>
- Bates, T. R. (1975). Gramsci and the theory of hegemony. *Journal of History of Ideas*, 36, 36.
- Bekerman, Z., & Kopelowitz, E. (Eds.). (2008). *Cultural education-cultural sustainability: Minority, diaspora, indigenous, and ethno-religious groups in multicultural societies*. New York, NY: Routledge.
- Bell, L. S., Nathan, A. J., & Peleg, I. (Eds.). (2000). *Negotiating culture and human rights*. New York, NY: Columbia University Press.
- Berg, B. L. (2007). *Qualitative research methods for the social sciences* (6th ed.). Boston: Pearson Education, Inc.
- Bergin, D. A., Cooks, H. C., & Bergin, C. C. (2007). Effects of a college access program for youth underrepresented in higher education: A randomized experiment. *Research in Higher Education*, 48(6), 727-750.
- Bergner, G. (1995). Who is that masked woman? Or the role of gender in Fanon's black skin, white masks? *PMLA*, 110(1), 75-88.
- Berliner, D. C. (2002). Educational research: The hardest science of all. *Educational Researcher*, 31(8), 18-20.
- Biegert, C. (1983). *Seit 200 Jahren ohne Verfassung* [Since 200 years without constitution]. Hamburg, Germany: Rohwolt Verlag.
- BIHE. (2006). Welcome to BIHE. Bahá'í Institute for Higher Education. Retrieved from <http://www.bihe.org/>
- Bishop, R. (2005). Freeing ourselves from neocolonial domination in research: A Kaupapa Māori approach to creating knowledge. In N. K. Denzin & Yvonna S. Lincoln (Eds.), *The sage handbook of qualitative research* (3rd ed.), (pp. 109-138). Thousand Oaks, CA: Sage Publications, Inc.
- Boal, A. (1979). *Theatre of the oppressed*. New York, NY: Urizen Books.

- Bogotch, I. E. (2000). Educational leadership and social justice: Theory into practice.
- Booth, W. C., Colomb, G. G., & Williams, J. M. (2003). *The craft of research* (2nd ed.). Chicago: The University of Chicago Press.
- Bourdieu, P. (1977). *Outline of a theory of practice*. Cambridge: Cambridge University Press.
- Bourdieu, P. (1984). *A social critique of the judgment of taste*. Trans. R. Nice. Cambridge: Harvard University Press.
- Bourdieu, P., Calhoun, C. J., LiPuma, E., & Postone, M. (1993). *Bourdieu: Critical perspectives*. Chicago: University of Chicago Press.
- Breivik, P. S. (2005). 21st century learning and information literacy. *Change*, 20-27.
- Brennan, J., de Vries, P., & Williams, R. (Eds.). (1997). *Standards and quality in higher education*. London: Jessica Kingsley Publishers.
- Brennan, J., King, & Lebeau, Y. (2004). *The role of universities in the transformation of societies*. London: Centre for Higher Education Research & Information. Retrieved from <http://www.open.ac.uk/cheri/documents/transf-final-report.pdf>
- Brennan, J., & Naidoo, R. (2008). Higher education and the achievement (and/or prevention) of equity and social justice. *Higher Education*, 56, 287-302.
- Briggs, J. (2006). *Curriculum companion to Innocents Lost*. Washington, DC: Amnesty International USA.
- Brown II, M. C., & Davis, J. E. (2001). The historically Black college as social contract, social capital, and social equalizer. *Peabody Journal of Education*, 76(1), 31-49.
- Buchmann, C., & Hannum, E. (2001). Education and stratification in developing countries: A review of theories and research. *Annual Review of Sociology*, 27, 77-102.
- Buck, C. (2003). Islam and minorities: The case of the Bahá'ís. In *Studies in Contemporary Islam* 5(1), 83-106.
- Burawoy, M. (1991). The extended case method. In M. Burawoy, A. Burton, A. Ferguson, K. Fox, J. Gamson, N. Gartrell, L. Hurst, C. Kurzman, L. Salzinger, J. Schiffman, & S. Ui (Eds.), *Ethnography unbound: Power and resistance in the modern metropolis* (pp. 271-290). Berkeley: University of California Press.
- Callejo Pérez, D. M., Fain, S. M., & Slater, J. J. (Eds.). (2011). *Higher education and human capital: Re/ thinking the Doctorate in America*. Rotterdam, The Netherlands: Sense Publishers.

- Capotorti, F. (1991). *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*. New York, NY: United Nations.
- Carnavale, A. P., & Strohl, J. (2013). *Separate and unequal: How higher education reinforces the intergenerational reproduction of white racial privilege*. Washington, DC: Center on Education and the Workforce, Georgetown University.
- Census. (2012). Census 2011. Retrieved from http://www.statssa.gov.za/Census2011/Products/Census_2011_Census_in_brief.pdf.
- Center for International Higher Education. (2013). International higher education. Retrieved from <http://www.bc.edu/content/bc/research/cihe/ihe.html>
- CERD. (2009). General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination. Retrieved from http://www.bayefsky.com/general/cerd_genrecom_32_2009.pdf
- Césaire, A. (1972). *Discourse on colonialism*. New York: Monthly Review Press.
- Chapman, D. W., & Austin, A. E. (2002a). *Higher education in the developing world: Changing contexts and institutional responses*. Westport, CT: Greenwood Publishing Group.
- Chapman, D. W., & Austin, A. E. (2002b). The changing context of higher education in the developing world. In D.W. Chapman & A.E. Austin (Eds.), *Higher education in the developing world: Changing contexts and institutional responses* (pp. 3-22). Westport, CT: Greenwood Publishing Group.
- Chapman, J. W., & Wertheimer, A. (Eds.). (1990). *Majorities and minorities: Nomos XXXII*. New York, NY: New York University Press.
- Chen, P. D., Guidry, K. R., & Lambert, A. D. (2009). Engaging online learners: A quantitative study of postsecondary student engagement in the online learning environment. Denton, TX: University of North Texas.
- Chilisa, B. (2012). *Indigenous research methodologies*. Thousand Oaks, CA: SAGE Publications, Inc.
- Clark, B. R. (1986). *The higher education system: Academic organization in cross-national perspectives*. Berkeley: University of California Press.
- Clark, N. L., & Worger, W. H. (2011). *South Africa: The rise and fall of apartheid*. Edinburgh: Longman.

- Cobo, J. M. (1982). Study on the discrimination against indigenous peoples: Final report (supplementary part) submitted by the Special Rapporteur Mr. José Martínez Cobo. New York, NY: United Nations Economic and Social Council.
- Cochrane, A., & Williams, R. (2010). The role of higher education in social and cultural transformation. *Higher Education and Society: A Research Report*. Retrieved from <http://www.open.ac.uk/cheri/documents/HigherEducationandSociety.pdf>
- Cochran-Smith, M. (2004). *Walking the road: Race, diversity and social justice in teacher education*. New York, NY: Teachers College Press.
- Cole, W. M. (2011). *Uncommon schools: The global rise of postsecondary institutions for indigenous peoples*. Stanford, CA: Stanford University Press.
- Collingsworth, T. (2002). The key human rights challenge: Developing enforcement mechanisms. In *Harvard Human Rights Journal*, 15, pp. 183-204.
- Commission on Human Rights. *Final report on the situation of human rights in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr. Reynaldo Galindo Pohl*, E/CN.4/1993/41 (28 January 1993), available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/104/51/PDF/G9310451.pdf?OpenElement>
- Cooper, R.L. (1989). *Language planning and social change*. Sydney, Australia: Cambridge University.
- Corbin, J., & Strauss, A. (2008). *Basics of qualitative research* (3rd. ed.). Thousand Oaks: SAGE Publications, Inc.
- Corrigan, S. (2005). *Beyond provision: A comparative analysis of two long-term refugee education systems*. Toronto: University of Toronto.
- Corson, D. (1993). *Language, minority education, and gender: Linking social justice and power*. Bristol, PA: Multilingual Matters Ltd.
- Cottrol, R. J. (2004). Brown and the contemporary Brazilian struggle against racial inequality: Some preliminary comparative thoughts, 66 *University of Pittsburgh Law Review*, 113-129.
- Coulthard, G. S. (2007). Subjects of empire: Indigenous Peoples and the 'politics of recognition' in Canada. *Contemporary Political Theory*, 6, 437-460.
- Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. Minneapolis: University of Minnesota Press.

- Council of Europe (1992). The European charter for regional or minority languages. Strasbourg, France: Council of Europe.
- Council of Europe (1993). Recommendation 1201 (1993). Strasbourg, France: Council of Europe.
- Council of Europe. (2006). Commentary on education under the framework convention for the protection of national minorities. Strasbourg, France: Council of Europe.
- Creswell, J. W. (2009). *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd ed.). Thousand Oaks: SAGE Publications, Inc.
- Creswell, J. W., & Plano Clark, V. L. (2007). *Designing and conducting mixed methods research*. Thousand Oaks, CA: SAGE Publications.
- Cross, K. P. (1981). Adults as learners. San Francisco: Jossey-Bass.
- Curtis, M. (2009). A world of discrimination: Minorities, indigenous peoples and education. London: Minority Rights Group International.
- D'Amato, A. A. (1984). *Jurisprudence: A descriptive and normative analysis of law*. Dordrecht, The Netherlands: Martinus Nijhoff Publishers.
- Daflon, V. T., Júnior, J. F., & Campos, L. A. (2012). Race-based affirmative actions in Brazilian public higher education: An analytical overview. *Cadernos de Pesquisa*, 43(148), 302-327.
- Danis, M., & Patrick, D. L. (2002). Health policy, vulnerability, and vulnerable populations. In M. Danis, C. Clancy, & L. R. Churchill (Eds.), *Ethical dimensions of health policy* (pp. 310-334). New York, NY: Oxford University Press.
- Davis, G. F., McAdam, D., Scott, W. R., & Zald, M. N. (2005). *Social movements and organization theory*. New York, NY: Cambridge University Press.
- Davis, J. E. (2002). *Stories of change: Narrative and social movements*. Albany, NY: State University of New York Press.
- Day, R. R. (1985). The ultimate inequality: Linguistic genocide. In N. Wolfson & J. Manes (Eds.), *Language of inequality* (pp. 163-180). Berlin: Walter de Gruyter & Co.
- de Silva, K.M. (1997). Affirmative action policies: The Sri Lankan experience. *Ethnic Studies Report*, 15(2), 245-287.

- de Verannes, F., & Murray, C. (2001). Thematic introduction. In UNESCO, *International Journal on Multicultural Societies*, 3(2), 56-60.
- Denzin, N. K. (1989). *Interpretive interactionism*. Thousand Oaks, CA: SAGE Publications, Inc.
- Denzin, N. K., Lincoln, Y. S., Smith, L. T. (Eds.). (2008). *Handbook of critical and indigenous methodologies*. Thousand Oaks, CA: SAGE Publications, Inc.
- Derso, S. A. (2007). Minority rights under international human rights law: From liberal individualism to multiculturalism and beyond. Paper presented at the annual meeting of the Law and Society Association, TBA, Berlin, Germany.
- Dewees, A., & Klees, S. J. (1995). Social movements and the transformation of national policy: Street and working children in Brazil. *Comparative Education Review*, 39(1), 76-100.
- Dewey, J. (1916). *Democracy and education* (p. 117). New York, NY: The Macmillian Company.
- Dodson, M. (2007). Report on indigenous traditional knowledge. Sixth session of Permanent Forum on Indigenous Issues. Retrieved from http://www.un.org/esa/socdev/unpfii/documents/6_session_dodson.pdf
- Donath, J. (1999). Identity and deception in the virtual community. In M.A. Smith & P. Kollock (Eds.) *Communities in Cyberspace*. New York, NY: Routledge.
- Donnelly, J. (1986) International human rights: A regime analysis. *International Organization*, 40(3), 599-642.
- Ebrahimzadeh, I. (1998). The development of distance education in Iran with special reference to the planning and management of Payam-e-Noor University. *International Journal of Educational Development*, 18(1), 75.
- Educafro. (2014). Conheça Educafro ["Meet Educafro"]. Retrieved from <http://www.educafro.org.br/site/conheca-educafro/>
- Eisenhardt, K. M. (1989). Building theories from case study research. *The Academy of Management Review*, 14(4), 532-550.
- Elabor-Idemudia, P. (2002). Participatory research: A tool in the production of knowledge in development discourse. In K. Saunders (Ed.), *Feminist post-development thought: Rethinking modernity, postcolonialism, and representation* (pp. 227-242). London: Zed Books.
- Enger, K. B. (2006). Minorities and online higher education. *Educause Quarterly*, (4), 7-8.

- European Commission. (2014). The Bologna process and the European higher education area. Retrieved from http://ec.europa.eu/education/policy/higher-education/bologna-process_en.htm
- Fairclough, N. (1992). *Discourse and social change*. Cambridge: Polity Press.
- Fairclough, N. (2005). Critical discourse analysis. *Marges Linguistiques*, 9, 76–94.
- Fairclough, N. (2011). Semiotic aspects of social transformation and learning. In R. Rogers (Ed.), *An introduction to critical discourse analysis in education* (2nd ed.) (pp. 119-127). New York: Routledge.
- Fairclough, N. L. and Wodak, R. (1997). In T. A. van Dijk (Ed.), *Discourse studies. A multidisciplinary introduction, vol. 2., Discourse as social interaction*. (258-284). London: Sage.
- FairTest. (2012). Schools that do not use SAT or ACT scores for admitting substantial numbers of students into bachelor degree programs. Retrieved from <http://www.fairtest.org/university/optional>
- Fanon, F. (1963). *The wretched of the earth*. New York: Grove Press.
- Fanon, F. (1967). *Black skins, white masks*. New York: Grove Press.
- Farsoun, M. (1973). Student protests and the coming crisis in Lebanon. *MERIP Reports*, (19), 3-14.
- Fawcett, J. (1982). *The international protection of minorities*. London: Minority Rights Group, Ltd.
- Feldman, J. (2014, August 25). Graduation rates for Black and Hispanic students at minority-serving institutions. *Journalist's Resource*. Retrieved from <http://journalistsresource.org/studies/society/race-society/graduation-rates-black-hispanic-students-minority-serving-institutions>
- Firkatian, M. (2009). Retaining ethnic identity: The Armenians in Bulgaria. In Z. Bekerman & E. Kopelowitz (Eds.), *Cultural education—cultural sustainability: Minority, diaspora, indigenous, and ethno-religious groups in multicultural societies* (181-199). New York, NY: Routledge.
- Fischman, G. E. (2004). *Critical theories, radical pedagogies, and global conflicts*. Lanham: Rowman & Littlefield Publishers, Inc.
- Fiske, E. B., & Ladd, H. F. (2004). *Elusive equity: Education reform in post-apartheid South Africa*. Washington, DC: Brookings Institution Press.

- Freeman, M. (2001). Is a political science of human rights possible? *The Netherlands Quarterly of Human Rights*, 19(2), 121-137.
- Freire, P. (2000). *Pedagogy of the oppressed* (30th anniversary ed.). New York, NY: Continuum.
- Fried, C. (Ed.). (1983). *Minorities: Community and identity*. New York, NY: Springer-Verlag.
- Fukuyama, F. (1995). *Trust: The social virtues and the creation of prosperity*. London: Penguin Books.
- FUNAI. (2015). Quem somos. FUNAI. Retrieved from <http://www.funai.gov.br/index.php/quem-somos>
- Gasman, M. Baez, B., & Sotello Viernes Turner, C. (Eds.) (2008). *Understanding minority-serving institutions*. Albany: State University of New York Press.
- Gee, J. P. (2011). Discourse analysis: What makes it critical? In R. Rogers (Ed.), *An introduction to critical discourse analysis in education* (2nd ed.) (pp. 23-45). New York: Routledge.
- Georgia Tech. (2002). DiGregorio Returns to Institute Following Education Mission to Iran. In *Georgia Tech News*, November 6, 2002.
- Gewirtz, S. (1998). Conceptualizing social justice in education: Mapping the territory. *Journal of Education Policy*, 13(4), 469-484.
- Ghanea, N. (2003). *Human rights, the UN and the Babá'is in Iran*. Boston: Martinus Nijhoff Publishers.
- Gharehbakloo, M. R. (2005). Technologies and frameworks of distance learning in Iran: Needs and challenges. Retrieved from http://www.niitcrs.com/iccs/papers/2005_10.pdf
- Gibson, R. (1999). Paulo Freire and pedagogy for social justice. In *Theory and Research in Social Education*, 27(2), 129-159.
- Gillham, B. (2000). *Case study research methods*. London: Continuum.
- Gillies, D. (2009). Critical discourse analysis and current education policy. Unpublished doctoral dissertation, University of Strathclyde, Glasgow, Scotland.
- Goodale, M., & Engle Merry, S. (Eds.). (2007). *The practice of human rights: Tracking law between the global and the local*. Cambridge: Cambridge University Press.

- Gorodetsky, R. (2011). Why traditional knowledge holds the key to climate change. Retrieved from <http://unu.edu/publications/articles/why-traditional-knowledge-holds-the-key-to-climate-change.html>
- Green, A., & Renton, R. (2009). Higher education as an instrument of social change: Educational means to political ends? Paper presented at 31st Annual EAIR Forum. Retrieved from <http://www.eair.nl/forum/vilnius/pdf/548.pdf>
- Greene, J. C. (2007). *Mixed methods in social inquiry*. San Francisco: Jossey-Bass.
- Griffiths, M. (2003). *Action for social justice in education*. Berkshire: Open University Press.
- Guillory, J. P. & Ward, K. (2008). Tribal colleges and universities: Identity, invisibility and current issues. In M. Gasman, B. Baez, & C. Sotello Viernes Turner (Eds.) (pp. 91-110). *Understanding minority-serving institutions*. Albany: State University of New York Press.
- Gumport, P. J. (Ed.). (2007). *Sociology of higher education: Contributions and their contexts*. Baltimore: The Johns Hopkins University Press.
- H.J. (2013, April 26). Affirmative action in Brazil: Slavery's legacy. *The Economist*. Retrieved from <http://www.economist.com/blogs/americasview/2013/04/affirmative-action-brazil>
- Habryarimana, J., Humphreys, M., Posner, D., Weinstein, J., Rosecrance, R., Stein, A., & Muller, J. Z. (2008). Is ethnic conflict inevitable?: Parting ways over nationalism and separatism. In *Foreign Affairs*, 87, 138-141.
- Hakim, C. (2000). *Research design: Successful designs for social and economic research*. New York, NY: Routledge.
- Ham, S., & Cha, Y. (2009). Positioning education in the information society: The transnational diffusion of the information and communication technology curriculum. *Comparative Education Review*, 53(4), 535-557.
- Hancock, I. (2009). Jewish responses to the Porrajmos (the Romani holocaust). Retrieved from <http://www.chgs.umn.edu/histories/victims/romaSinti/jewishResponses.html>
- Hatch, M. J. (1997). *Organization theory: Modern symbolic and postmodern perspectives*. New York, NY: Oxford University Press.
- Heck, R. H. (2004). *Studying educational and social policy*. Mahwah, NJ: Lawrence Earlbaum Associates, Inc.
- Hegel, G.F. (1977). *The phenomenology of spirit*. Oxford: Oxford University Press.

- Helfer, L. R. (2002). Overlegalizing human rights: International relations theory and the Commonwealth Caribbean backlash against human rights regimes. *Columbia Law Review*, 102, 1832-1911.
- Heller, M. (2006). *Linguistic minorities and modernity; A sociolinguistic ethnography* (2nd ed.). New York, NY: Continuum International Publishing Group.
- Henrard, K. (2001). Language rights and minorities in South Africa. In UNESCO, *International Journal on Multicultural Societies*, 3(2), 78-98.
- Hernandez, T. K. (2013). Affirmative action in the Americas. *Americas Quarterly*. Retrieved from <http://www.americasquarterly.org/affirmative-action-in-the-americas>
- Hill, J. P. (2009). Higher education as moral community: Institutional influences on religious participation during college. *Journal for the Scientific Study of Religion*, 48(3), 515-534.
- Huber, J., & Harkavy, I. (2008). *Higher education and democratic culture: Citizenship, human rights and civic responsibility*. Paris: Council of Europe.
- Ichilov, O. (2004). *Political learning and citizenship education under conflict: The political socialization of Israeli and Palestinian youngsters*. New York, NY: Routledge.
- ILO. (2013). Convention No. 169. Retrieved from <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>
- Inter-Agency Network for Education in Emergencies. (2006). *Minimum standards for education in emergencies, chronic crises and early reconstruction*. Retrieved from http://www.ineesite.org/minimum_standards/MSEE_report.pdf
- International Federation for Human Rights. (2003). Discrimination against religious minorities in Iran. Retrieved from <https://www.fidh.org/IMG/pdf/ir0108a.pdf>
- International Labor Organization. (1989). C169 indigenous and tribal peoples convention, 1989. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100897.pdf
- International Labor Organization. (2013). Convention No. 169. Retrieved from <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>
- International Movement Against All Forms of Discrimination and Racism. (2011). ICERD & CERD: A guide for civil society actors. Retrieved from <http://www2.ohchr.org/english/bodies/cerd/docs/ICERDManual.pdf>

- Iser, W. (1993). *Prospecting: From reader response to literary anthropology*. Baltimore: Johns Hopkins University Press.
- ISRCC. (1991). Confidential memorandum on the Bahá'í question. Retrieved from <http://news.bahai.org/documentlibrary/TheBahaiQuestion.pdf>
- IUCN. (2010). Why do we need biodiversity? Retrieved from <https://www.iucn.org/iyb/about/biodiversity/>
- IWCE GmbH. (2009). The World Conference on Higher Education. Retrieved from http://www.icwe.net/unesco-wche2009/exhibition/pdf/unesco_higer_education_exhibition_2009.pdf.
- IWCE GmbH. (2009). The World Conference on Higher Education. Retrieved from http://www.icwe.net/unesco-wche2009/exhibition/pdf/unesco_higer_education_exhibition_2009.pdf.
- Jäger, S. (2001). Discourse and knowledge: theoretical and methodological aspects of a critical discourse and dispositive analysis. In R. Wodak & M. Meyer (Eds.), *Methods of critical discourse analysis* (pp. 32–62). London: SAGE Publications, Inc.
- Johnson, B., & Turner, L. A. (2003). Data collection strategies in mixed methods research. In C. Teddlie & A. Tashakkori (Eds.), *Handbook on mixed methods research in social and behavioral sciences* (297-320). Thousand Oaks: SAGE Publications.
- Johnson, C., & Leslie, J. (2004). *Afghanistan: The mirage of peace*. London: Zed.
- Kahl, C. M., & Davis-Kahl, S. (2010). Human rights reference sources: A critical annotated bibliography. Retrieved from http://works.bepress.com/cgi/viewcontent.cgi?article=1011&context=stephanie_davis_kahl
- Kai, J. (2009). The role of universities in achieving social justice. *Frontiers of Education in China*, 4(2), 159-174.
- Karlberg, M. (2007). Contextual media literacy revisited. *Academic Exchange Quarterly*, 11(3), 165-170.
- Kawharu, H. (2004). Te Tiriti o Waitangi – The Treaty of Waitangi (Kawharu footnotes of the Māori text).
- Kemper, E. A., Stringfield, S., & Teddlie, C. (2003). Mixed methods sampling strategies in social science research. In C. Teddlie & A. Tashakkori (Eds.), *Handbook on mixed methods research in social and behavioral sciences* (135-166). Thousand Oaks: SAGE Publications.

- Khajepour, B. (2014). Can Rouhani reverse Iran's brain drain? *Al-Monitor*. Retrieved from <http://www.al-monitor.com/pulse/originals/2014/01/iran-economy-diaspora-reconciliation-sustainable-progress.html>
- King, L., & Schielmann, S. (2004). *The challenge of indigenous education: Practice and perspectives*. Paris: UNESCO.
- Kjelland, J. (2008). Economic returns to higher education: Signaling v. human capital theory; An analysis of competing theories. *The Park Place Economist*, 16(1), 69-77.
- Kly, Y. N. (1997). *Societal development & minority rights*. Atlanta: Clarity Press, Inc.
- Kovach, M., Bjornson, D.L., & Montgomery, H. (2008). Distance education for social justice in the wireless era: Enabling indigenous students' access to post-secondary education through distance learning. Paper presented at the Access to Learning for Development session at The Fifth-Pan Commonwealth Forum on Open Learning, London, United Kingdom.
- Kress, G. (2011). Discourse analysis and education: A multimodal semiotic approach. In R. Rogers (Ed.), *An introduction to critical discourse analysis in education* (2nd ed.) (pp. 205-226). New York: Routledge.
- Krippendorff, K. (2012). *Content analysis: An introduction to its methodology* (3rd ed.). Thousand Oaks, CA: Sage Publications.
- Kukathas, C. (1992). Are there any cultural rights? *Political Theory*, 20(1), 105-139.
- Kumaraswamy, P. R. (2003). Problems of studying minorities in the Middle East. *Alternatives: Turkish Journal of International Relations*, 2(2), 244-264.
- Kurokawa, M. (Ed.). (1970). *Minority responses: Comparative views of reactions to subordination*. New York, NY: Random House, Inc.
- Kymlicka, W. (1992). The rights of minority cultures [Reply to Kukathas]. *Political Theory*, 20(1), 140-146.
- Kymlicka, W. (1995). *Multicultural citizenship: A liberal theory of minority rights*. New York, NY: Oxford University Press.
- Kymlicka, W. (1997). Do we need a liberal theory of minority rights? Reply to Carens, Young, Parekh and Forst. *Constellations*, 4(1), 72-87.
- Kymlicka, W. (2001). *Politics in the vernacular: Nationalism, multiculturalism, and citizenship*. New York, NY: Oxford University Press.

- Kymlicka, W. (2007). *Multicultural odysseys: Navigating the new international politics of diversity*. New York, NY: Oxford University Press.
- Ladson-Billings, G., & Tate, W. F. (Eds.). (2006). *Education research in the public interest: Social justice, action, and policy*. New York, NY: Teachers College Press.
- Lagier, J. (2003). Distance learning and the minority student: Special needs and opportunities. *Internet and Higher Education*, 6, 179-184.
- Landman, J. (2006). *Studying human rights*. New York, NY: Oxford University Press.
- Laskar, M. H. (2010). Rethinking reservation in higher education in India. *Indian Law Institute Law Review*, 1(1), 25-53.
- Lee, H. (2010). *Racial inequality and affirmative action in Malaysia and South Africa* (Doctoral dissertation). Available from ScholarWorks Open Access Dissertations. Retrieved from http://scholarworks.umass.edu/open_access_dissertations/291/
- Levy, D. C. (2010). *The decline of private higher education*. Albany, New York: Program for Research on Private Higher Education.
- Lewis, J., & Jhally, J. (1998). The struggle over media literacy. *Journal of Communication*, 48(1), 109-120.
- Lewis, W. A. (1954). Economic development with unlimited supplies of labour. In *The Manchester School*, 22(2), 139-191.
- Lincoln, Y. S., & Denzin, N. K. (2008). Epilogue: The lion speaks. In N. K. Denzin, Y. S. Lincoln, & L. T. Smith (Eds.), *Handbook of critical and indigenous methodologies* (
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Thousand Oaks: SAGE Publications.
- Liptak, A. (2014). Court backs Michigan on affirmative action. Retrieved from <http://www.nytimes.com/2014/04/23/us/supreme-court-michigan-affirmative-action-ban.html>
- Locke, T. (2004). *Critical discourse analysis*. London: Continuum International Publishing Group.
- Lucas, R. (1970). The right to higher education. *The Journal of Higher Education*, 41(1), 55-64.
- MacDonald, V. M., Botti, J. M., & Clark, L. H. (2007). From Visibility to Autonomy: Latinos and Higher Education in the U.S., 1965-2005. *Harvard Educational Review*, 77(4), 474-504.

- Macedo, D. (1999). Preface. In L. M. Semali & J. L. Kincheloe (Eds.), *What is indigenous knowledge? Voices from the academy* (pp. xi-xvi). New York & London: Falmer Press.
- MacIntyre, A. (1971). Is a science of comparative politics possible? In A. MacIntyre *Against the Self-Images of the Age* (260-279). London: Duckworth.
- Maier, R. (2007). Discourse and cultural transformation. In Shi-xu (Ed.), *Discourse as cultural struggle* (pp. 17-28). Aberdeen, Hong Kong: Hong Kong University Press.
- Mayer, S. E. (2007). Social justice. Retrieved from <http://www.justphilanthropy.org/resources/SocialJustice.pdf>
- McAdam, D., McCarthy, J. D., Zald, M. N. (Eds.). (1996). *Comparative perspectives on social movements: Political opportunities, mobilizing structures, and cultural framings*. New York, NY: Cambridge University Press.
- McAdam, D., Tarrow, S., & Tilly, C. (2001). *Dynamics of contention*. New York, NY: Cambridge University Press.
- McCamant, J. F. (1981). Social science and human rights. *International Organization*, 35(3), 531-552.
- McCarthy, J. D., & Zald, M. N. (1977). Resource mobilization and social movements: A partial theory. *American Journal of Sociology*, 82(6), 1212-1241.
- McDonald, J. F. (2012). Minority-serving institutions: Report to Caret. Retrieved from <http://www.aplu.org/document.doc?id=3672>.
- McLaren, P., & Kincheloe, J. L. (Eds.). (2007). *Critical pedagogy: Where are we now?*. New York, NY: Peter Lang Publishing, Inc.
- Merriam, S. (1998). *Qualitative research and case study applications in education*. San Francisco: Jossey-Bass Publishers.
- Mertens, D. M. (2003). Mixed methods and the politics of human research: The transformative-emancipatory perspective. In C. Teddlie & A. Tashakkori (Eds.), *Handbook on mixed methods research in social and behavioral sciences* (135-166). Thousand Oaks: SAGE Publications.
- Mettler, S. (2014). *Degrees of inequality: How the politics of higher education sabotaged the American dream*. New York, NY: Basic Books.
- Mignolo, W. (2009). Who speaks for the “human” in human rights? In J. Barreto (Ed.), *Human rights from a third world perspective: Critique, history and international law* (pp. 44-64). Newcastle, UK: Cambridge Scholars Publishing.

- Miller-Cribbs, J. E. (2001). Information technology and oppressed populations: Integration or isolation? *Journal of Technology in Human Services*, 18(1), 155-171.
- Ministry of Education. (2013a). *Ka hikitia - accelerating success 2013-2017*. Auckland: Ministry of Education.
- Ministry of Education. (2013b). *Tau mai te reo: The Māori language in education strategy 2013-2017*. Auckland: Ministry of Education.
- Ministry of Education. (2014). Draft tertiary education strategy: Summary of submissions. Retrieved from <http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/TertiaryEducation/TertiaryEducationStrategy2014/TES2014SummaryOfSubmissions.pdf>
- Minority Rights Group International. (2007). World directory of minorities and indigenous peoples - Brazil: Overview, 2007. Retrieved from <http://www.refworld.org/docid/4954ce5a23.html>
- Minority Rights Group International. (2009a). Who are minorities? Minority Rights Group International. Retrieved from <http://www.minorityrights.org/566/who-are-minorities/who-are-minorities.html>.
- Minority Rights Group International. (2009b). *State of the world's minorities and indigenous peoples 2009: Focus on education*. London: Minority Rights Group International.
- Minority Rights Group International. (2011). *State of the world's minorities and indigenous peoples 2011: Focus on women's rights*. London: Minority Rights Group International.
- Mohanty, C. T. (2003). *Feminism without borders: Decolonizing theory, practicing solidarity*. Durham, NC: Duke University Press.
- Mohd Noor, K. B. (2008). Case study: A strategic research methodology. *American Journal of Applied Sciences*, 5(11), 1602-1604.
- Moradi, S. (2009). Modeling of ICT literacy and its evaluation among principals and staff in educational organizations. *The New Educational Review*, 18(2), 217-234.
- Morin, E. (2001). *Seven complex lessons in education for the future*. Paris, France: UNESCO Publishing.
- Morris, A. D., & McClurg Mueller, C. (1992). *Frontiers in social movement theory*. New Haven: Yale University Press.
- Morsink, J. (1999). *The Universal Declaration of Human Rights: Origins, drafting, and intent*. Philadelphia: University of Pennsylvania Press.

- Mossini, F., Marcondes, N. R., & Teodoro, L. F. (2013). The higher education in Brazil: Some facts, a decade of data collected, *ICERI2013 Proceedings* (pp. 7401-7411).
- MTRG. 2003. Māori tertiary education framework. Auckland: Māori Tertiary Education, Ministry of Education.
- NZQA. (2014). What we do. New Zealand Qualifications Authority. Retrieved from <http://www.nzqa.govt.nz/about-us/our-role/what-we-do/>
- Nagengast, C., & Vélez-Ibáñez, C. (2004). Introduction: The scholar as activist. In C. Nagengast & C. Vélez-Ibáñez (Eds.), *Human rights: The scholar as activist*. Oklahoma City: Society for Applied Anthropology.
- Nascimento, L. (2014, June 3). Câmara conclui votação do PNE e texto segue à sanção presidencial. *Agência Brasil*. Retrieved from <http://agenciabrasil.ebc.com.br/politica/noticia/2014-06/camara-conclui-votacao-do-pne-com-prouni-e-fies-nos-10-do-pib>
- National Bahá'í Education Task Force. (1995). *Foundations for a spiritual education: Research of the Bahá'í writings*. Evanston: National Spiritual Assembly of the Bahá'ís of the United States.
- Nedelcu, M. (2008). Internet diaspora: How Romanian scholars abroad connect home. Working paper, Institute of Sociology, University of Neuchâtel, Switzerland. Retrieved from http://www.ssoar.info/ssoar/files/2008/838/nedelcu_internetdiaspora_wp17.pdf
- Nemat, M. (2008). Religious minorities in Iran. Retrieved from http://www.marinanemat.com/essay_minorities.pdf
- Neuendorf, K. A. (2002). *The content analysis guidebook*. Thousand Oaks, CA: Sage Publications.
- New Zealand Census. (2013). 2013 census quickstats about Māori: Education. Retrieved from <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-maori-english/education.aspx>
- Newman, S., & Blau, J. (2012). International human rights. Retrieved from http://www.acluofnorthcarolina.org/?q=human_rights
- Ng, R., Staton, P. A., & Scane, J. (1995). *Anti-racism, feminism, and critical approaches to education*. Westport, CT: Greenwood Publishing Group.
- Nicholson, R. (1997). Marketing the Maori language. In J. Reyhner (Ed.), *Teaching Indigenous languages* (pp. 206-213). Flagstaff, Arizona: Northern Arizona University.

- Nieto, S., & Bode, P. (2007). *Affirming diversity: The sociopolitical context of multicultural education* (5th edition). New York, NY: Allyn & Bacon.
- Northwest Territories. (2009). Affirmative action policy designated groups. Retrieved from <http://www.hr.gov.nt.ca/employment/affirmativeaction/Affirmative%20Action%20Policy%20Designated%20Groups.pdf>
- Novais, A. (2011, October 30). The Brazilian educational system. *The Brazil Business*. Retrieved from thebrazilbusiness.com/article/the-brazilian-educational-system
- Nyerere, J. (1979). *Crusade for liberation*. Dar Es Salaam: Oxford University Press.
- OECD. (2006). Meeting of OECD Education Ministers. *Higher education: Quality, equity and efficiency*. Organization for Economic Co-operation and Development. Retrieved from <http://www.oecd.org/dataoecd/30/7/36960580.pdf>
- Observatório do PNE. (2013). Indicadores de contexto. Retrieved from <http://www.observatoriodopne.org.br/pne/indicadores>
- Office of the High Commissioner for Human Rights. (2008). Key concepts on ESCRs: Myths and misconceptions. Retrieved from <http://www.ohchr.org/EN/Issues/ESCR/Pages/MythsandmisconceptionsonESCR.aspx>
- Office of the High Commissioner for Human Rights. (2008). Minorities and the right to education. Concept paper from the United Nations forum on minority issues. Geneva, Switzerland.
- Office of the High Commissioner for Human Rights. (2009a). Promoting and protecting the right to education for minorities. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/RighttoEducationforMinorities.aspx>
- Office of the High Commissioner for Human Rights. (2009b). Quality education for indigenous peoples. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/QualityEducationForIndigenousPeoples.aspx>
- Office of the High Commissioner for Human Rights. (2010). *Minority rights: International standards and guidance for implementation*. Retrieved from http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf
- Office of the High Commissioner for Human Rights. (2012). Cross-cutting themes. Retrieved from <http://www.ohchr.org/EN/Issues/Minorities/IEExpert/Pages/Issues.aspx>

- Office of the High Commissioner for Human Rights. (2012). International human rights law. Retrieved from <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>.
- Office of the High Commissioner for Human Rights. (2012). International human rights law. Retrieved from <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>
- Office of the High Commissioner for Human Rights. (2012). Universal periodic review. Retrieved from <http://www.ohchr.org/EN/HRbodies/UPR/Pages/UPRMain.aspx>
- Office of the United Nations High Commissioner for Human Rights. (2008). Frequently asked questions on economic, social and cultural rights: Fact sheet no. 33. Retrieved from <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>
- Ogbu, J. U. (1993). Frameworks—variability in minority school performance: A problem in search of an explanation. In E. Jacob & C. Jordan (Eds.), *Minority education: Anthropological perspectives* (pp. 88-111). Norwood, New Jersey: Ablex Publishing Corporation.
- Oliver, D. E. (2004). Human capital theory and higher education in developing countries. *Journal of Thought*, 39(1), 119-130.
- Orange, C. (2012). Treaty of Waitangi: Creating the Treaty of Waitangi. Te Ara: The encyclopedia of New Zealand. Retrieved from <http://www.teara.govt.nz/en/treaty-of-waitangi/>
- Osler, A. (2012). Higher education, human rights and inclusive citizenship. In T. N. Basit & S. Tomlinson (Eds.), *Social inclusion and higher education*. Chicago, IL: University of Chicago Press.
- Oxford English Dictionary. (2014a). Capacity. Retrieved from <http://www.oed.com/view/Entry/27368?redirectedFrom=capacity#eid>
- Oxford English Dictionary. (2014b). Quality. Retrieved from http://www.oxforddictionaries.com/us/definition/american_english/quality?searchDictCode=all
- Oxford English Dictionary. (2014c). Standards. Retrieved from http://www.oxforddictionaries.com/us/definition/american_english/standard?q=standards&searchDictCode=all
- Oxford English Dictionary. (2015a). Usufruct. Retrieved from <http://www.oxforddictionaries.com/us/definition/english/usufruct>

- Oxford English Dictionary. (2015b). Counter. Retrieved from <http://www.oxforddictionaries.com/us/definition/english/counter>
- Pallof, R.M. & Pratt, K. (2001). *Lessons from the Cyberspace Classroom: The Realities of Online Teaching*. San Francisco, CA: Jossey-Bass, Inc.
- Paulston, R. G. (1980). *Other dreams, other schools: Folk colleges in social and ethnic movements*. Pittsburgh: University Center for International Studies.
- Pavel, D. M., Inglebret, E., & Banks, S. R. (2001). Tribal colleges and universities in an era of dynamic development. *Peabody Journal of Education*, 76(1), 50-72.
- Pentassuglia, G. (2002). *Minorities in international law*. Strasbourg: Council of Europe Publishing.
- Pereira, M. (2003). Brazil: New racial equality minister favors affirmative action. *Inter Press Service*.
- Perraton, H. (2000). *Open and distance learning in the developing world*. New York, NY: Routledge.
- Petherbridge-Hernández, P. (1990). Reconceptualizing liberating non-formal education: A Catalan case study. *Compare: A Journal of International and Comparative Education*, 20(1), 41-51.
- Pigou, A. C. (1928). *A study in public finance*. London: Macmillan.
- Pigozzi, M. J. (1999). *Education in emergencies and for reconstruction: A developmental approach*. New York, NY: United Nations Children's Fund.
- Pillay, N. (2009, November 11). Brazil's indigenous and Afro-Brazilian populations face serious discrimination. *The Huffington Post*. Retrieved from http://www.huffingtonpost.com/navi-pillay/brazils-indigenous-and-af_b_362183.html
- Plantas, R. (2014, August 26). Brazil's 'Quilombo' movement may be the world's largest slavery reparations program. *The Huffington Post*. Retrieved from http://www.huffingtonpost.com/2014/07/10/brazil-quilombos_n_5572236.html
- Preece, J. J. (2005). *Minority rights: Between diversity and community*. Malden, MA: Polity Press.
- Putnam, R. (1994). *Making democracy work: Civic traditions in modern Italy*. Princeton: Princeton University Press.
- Rapley, T. (2008). *Doing conversation, discourse, and document analysis*. London: SAGE Publications, Inc.

- Rawls, J. (1971). *A theory of justice*. Cambridge, MA: Harvard University Press.
- Raz, J. (1990). Facing diversity: The case of epistemic abstinence. In *Philosophy and Public Affairs*, 19(1), 3-46.
- Rehman, J. (2000). *The weaknesses in the international protection of minority rights*. Cambridge: Kluwer Law International.
- Reilly, C. (2014, December 10). Norfolk State University is placed on probation. *The Virginian-Pilot*. Retrieved from <http://hamptonroads.com/2014/12/norfolk-state-university-placed-probation>
- Rex, J. (1996). *Ethnic minorities in the modern nation state*. New York, NY: St. Martin's Press, Inc.
- Rheingold, H. (2000). *The Virtual Community*. Cambridge: The MIT Press.
- Riddell, R. (2002). *Minorities, minority rights and development*. London: Minority Rights Group International.
- Ridenour, C. S., & Newman, I. (2008). *Mixed methods research: Exploring the interactive continuum*. Carbondale: Southern Illinois University Press.
- Rizvi, F. (1998). Some thoughts on contemporary theories of social justice. In B. Atweh, S. Kemmis, & P. Weeks (Eds.), *Action research in practice: Partnerships for social justice in education* (pp. 47-56). New York, NY: Routledge.
- Roberts, C. M. (2004). *The dissertation journey: A practical and comprehensive guide to planning, writing, and defending your dissertation*. Thousand Oaks: Corwin Press.
- Rogers, I. H. (2012). Brazil's affirmative-action quotas: Progress? In *The Chronicle of Higher Education*. Retrieved from <http://chronicle.com/blogs/conversation/2012/11/05/brazils-affirmative-action-quotas-progress>
- Rogers, R. (2011). *An introduction to critical discourse analysis in education* (2nd ed.). New York: Routledge.
- Roma Education Fund. (2004). Summary document. Paris, December 2-3, 2004.
- Romero, S. (2012, August 30). Brazil enacts affirmative action law for universities. *The New York Times*. Retrieved from <http://www.nytimes.com/2012/08/31/world/americas/brazil-enacts-affirmative-action-law-for-universities.html>
- Rossman, G. B., & Rallis, S. F. (2003). *Learning in the field: An introduction to qualitative research* (2nd ed.). Thousand Oaks: SAGE Publications, Inc.

- Ruth, S. & Shi, M. (2001). Distance learning in developing countries: Is anyone measuring the cost-benefits? *TechKnowLogia*.
- Ryan, W. (1971). *Blaming the victim*. New York, NY: Pantheon Books.
- Rymarz, R., & De Souza, M. (2008). Born with gold in your mouth: Maintaining identity in Australian Coptic Orthodox young adults. In Z. Bekerman & E. Kopelowitz (Eds.), *Cultural education—cultural sustainability: Minority, diaspora, indigenous, and ethno-religious groups in multicultural societies* (165-180). New York, NY: Routledge.
- Sahraei, F. (2012). Iranian university bans on women causes consternation. *BBC News*. Retrieved from <http://www.bbc.co.uk/news/world-middle-east-19665615>.
- Said, E. W. (1978). *Orientalism*. New York: Random House, Inc.
- Sami, K. M. (1979). Arab education in Israel. *Journal of Palestine Studies*, 8, 116-120.
- Sandoval, C. (1991). U.S. third world feminism: The theory and method of oppositional consciousness in the postmodern world. In *Genders* 10, 1-24.
- Sandoval, C. (2000). *Methodology of the oppressed*. Minneapolis, MN: University of Minnesota Press.
- Sandretto, S., Lang, C., Schon, P., & Whyte, B. (2003). A collaborative self-study into teacher education and social justice. Retrieved from <http://www.aare.edu.au/03pap/san03373.pdf>
- Sattarzadeh, S. D. (2012). The right to learn. The right to believe: The BIHE as a social movement in promoting the rights of minorities in Iran. White paper.
- Sattarzadeh, S. D. (2014). Report on the inaugural world conference on Indigenous Peoples 2014 at UN headquarters. Paper.
- Sayed, Y. (2009). Overcoming exclusion in education. In Minority Rights Group International, *The state of the world's minorities and indigenous peoples 2009. Education special issue* (24-35). London: Minority Rights Group International.
- Schick, J. (2006). Beyond rules: A critique of the liberal human rights regime. *International Relations*, 20(3), 321-327.
- Schlyter, B. N. (2001). Language policies in present-day Central Asia. In UNESCO, *International Journal on Multicultural Societies*, 3(2), 127-136.
- Schwartz-Shea, P., & Yanow, D. (2012). *Interpretive research design: Concepts and processes*. New York, NY: Routledge.

- Schwellnus, G. (2006). Reasons for constitutionalization: Non-discrimination, minority rights and social rights in the convention on the EU charter of fundamental rights. *Journal of European Public Policy*, 13(8), 1265-1283.
- Sebahara, P. (1998). The creation of ethnic division in Rwanda. Retrieved from <http://www.un-ngls.org/orf/documents/publications.en/voices.africa/number8/7sebahara.htm>.
- Seller, M. (2001). *We built our lives: Education and community among Jewish refugees interned by Britain in World War II*. Westport, CT: Greenwood.
- Shi-xu. (2007). Discourse studies and cultural politics: An introduction. In Shi-xu (Ed.), *Discourse as cultural struggle* (pp. 3-15). Aberdeen, Hong Kong: Hong Kong University Press.
- Shklar, J. N. (1990). *The faces of injustice*. New Haven, CT: Yale University Press.
- Siavoshi, S. (1990). *Liberal nationalism in Iran: The failure of a movement*. Boulder, Colorado: Westview Press.
- Significados. (2014). Significado de stricto sensu. Retrieved from <http://www.significados.com.br/stricto-sensu/>
- Silver, H. (2007). Higher education and social change: Purpose in pursuit? *History of Education*, 36(4-5), 535-550.
- Simões, A. A., & Taranto Goulart, O. M. (2006). Brazil's national award for innovation in education management: An incentive for local education authorities to improve municipal education systems toward the goals of the national education plan. In *The Innovation Journal: The Public Sector Innovation Journal*, 11(3). <http://www.innovation.cc/scholarly-style/simoes6goular.pdf>
- Simpson, A., & Smith, A. (2014). *Theorizing Native studies*. Durham, North Carolina: Duke University Press.
- Sleeter, C. E. (1996). *Multicultural education as social activism*. Albany: State University of New York Press.
- Smith, A. (1776). *An inquiry into the nature and causes of the wealth of nations book 2: Of the nature, accumulation, and employment of stock*.
- Smith, A. (2005). *Conquest: Sexual violence and American Indian genocide*. Cambridge, MA: South End Press.

- Smith, G. H. (1990). Research issues related to Māori education, paper presented to NZARE Special Interest Conference, Massey University, reprinted in 1992, The Issue of Research and Māori, Research Unit for Māori Education, The University of Auckland.
- Smith, L. T. (2012). *Decolonizing methodologies: Research and indigenous peoples* (2nd ed.). London: Zed Books, Ltd.
- Soares, E. (2012). Brazil: New quota law reserves 50 percent of the places at federal universities for public school students. Retrieved from http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403317_text
- Spacks, P. M. (Ed.). (1996). *Advocacy in the classroom: Problems and possibilities*. New York, NY: St. Martin's Press.
- Spring, J. (2000). *The universal right to education: Justification, definition and guidelines*. Mahwah: Lawrence Erlbaum Associates, Inc.
- Spring, J. (2001). *Globalization and educational rights: An intercivilizational analysis*. Mahwah: Lawrence Erlbaum Associates, Inc.
- Stanton, G.H. (2009). The Rwandan genocide: Why early warning failed. In *Journal of African Conflicts and Peace Studies*, 1(2), 6-25.
- Statistics New Zealand Tatauranga Aotearoa. (2013). The New Zealand census of population and dwellings Retrieved from <http://www.stats.govt.nz/Census/2013-census.aspx>
- Stein, L. (2009). Social movement web use in theory and practice: a content analysis of U.S. movement websites. *New Media & Society*, 11(5).
- Stern, S. (2009). Pedagogy of the oppressor. *The Washington Times*, April 27, 2009.
- Stromquist, N. P. (2007). *Feminist organizations and social transformation in Latin America*. Boulder, CO: Paradigm Publishers.
- Stromquist, N. P. (2007). *Feminist organizations and social transformation in Latin America*. Boulder, CO: Paradigm Publishers.
- Survival International. (2013). Background briefing. FUNAI – National Indian Foundation (Brazil). Retrieved from <http://www.survivalinternational.org/about/funai>
- Swail, W.S., Redd, K.E., & Perna, L. W. (2003). *Retaining minority students in higher education: A framework for success*. Hoboken: Wiley Periodicals Inc.
- Tahzib, B. (1995). *Freedom of religion or belief: Ensuring effective international legal protection*. The Hague, The Netherlands: Kluwer Law International.

- Tatlow, D.W. (2012). Women in China face rising university entry barriers. *The New York Times*. Retrieved from http://www.nytimes.com/2012/10/08/world/asia/08iht-educlede08.html?pagewanted=all&_r=0
- Taubman, P. J., & Wales, T. (1974). The human-capital approach to higher education. In P. J. Taubman & T. Wales (Eds.) *Higher education and earnings: College as an investment and screening device* (pp. 25-36). Ann Arbor, MI: UMI Research Press.
- Taylor, C. (1994). The politics of recognition. In A. Guttman (Ed.), *Re-examining the politics of recognition* (pp. 25–73). Princeton, New Jersey: Princeton University Press.
- Teddlie, C. & Tashakkori, A. (Eds.). (2003). *Handbook on mixed methods research in social and behavioral sciences*. Thousand Oaks: SAGE Publications.
- Teddlie, C., & Tashakkori, A. (2009). *Foundations of mixed methods research: Integrating quantitative and qualitative approaches in the social and behavioral sciences*. Thousand Oaks: SAGE Publications, Inc.
- Thames, H. K., & Seiple, C. (2009). *International religious freedom advocacy: A guide to organizations*. Waco, TX: Baylor University Press.
- Thiong'o, N. (1986). *Decolonising the mind: the politics of language in African literature*. London Portsmouth, NH: J. Currey Heinemann.
- Thornberry, P. (1991). *International law and the protection of rights of minorities*. New York, NY: Oxford University Press.
- Thornberry, P. (2012). Some controversies in the drafting of the declaration: A personal recollection. Retrieved from <http://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session5/statements/ItemII/1.%20Thornberry.pdf>
- Tollefson, J. (1991). Planning language, planning inequality. Retrieved from <http://www-writing.berkeley.edu/TESL-EJ/ej01/r.2.html>
- Tomaševski, K. (2006). *The state of the right to education worldwide. Free or fee : 2006 global report*. Retrieved from http://www.katarinaTomaševski.com/images/Global_Report.pdf
- Troyna, B., & Vincent, C. (1995). The discourses of social justice in education. *Discourse: Studies in the Cultural Politics of Education*, 16(2), 149-166.
- Tuck, E. (2009). Suspending damage: A letter to communities. *Harvard Educational Review*, 79(3), 409-428.

- Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. In *Decolonization: Indigeneity, Education & Society*, 1(1), 1-40.
- Turner, J. C. (2005). Explaining the nature of power: A three-process theory. *European Journal of Social Psychology*, 35, 1-22.
- Twining, W. (2009). *Human rights, Southern voices: Francis Deng, Abdullahi An-Naim, Yash Ghai and Upendra Baxi*. Cambridge: Cambridge University Press.
- Twining, W. (2013). Human rights, southern voices: Yash Ghai and Upendra Baxi. In J. Barreto (Ed.), *Human rights from a third world perspective: Critique, history and international law* (pp. 256-310). Newcastle, UK: Cambridge Scholars Publishing.
- UN Office of the High Commissioner. (2012). The independent expert on human rights and international solidarity. Retrieved from <http://www.ohchr.org/EN/Issues/Solidarity/Pages/IESolidarityIndex.aspx>
- UNESCO Bureau of Public Information. (2009). The 2009 world conference on higher education: Reacting to new dynamics. Paris: UNESCO Bureau of Public Information.
- UNESCO Institute for Lifelong Learning. (2013). UNESCO institute for lifelong learning. Retrieved from <http://uil.unesco.org/about-us/news-target/unesco-institute-for-lifelong-learning/27f167bca55e284291781a1d4c82ecf2/>
- UNESCO Institute of Statistics. (2011). International standard classification of education: ISCED 2011. Retrieved from <http://www.uis.unesco.org/Education/Documents/isced-2011-en.pdf>
- UNESCO. (1974). Recommendation concerning education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms. Retrieved from http://www.unesco.org/education/nfsunesco/pdf/Peace_e.pdf
- UNESCO. (1990). World declaration on education. Retrieved from <http://www.unesco.org/education/wef/en-conf/Jomtien%20Declaration%20eng.shtm>.
- UNESCO. (1997a). International standard classification of education. Retrieved from http://www.unesco.org/education/information/nfsunesco/doc/isced_1997.htm
- UNESCO. (1997b). The Hamburg declaration on adult learning. Retrieved from <http://www.unesco.org/education/uie/confintea/pdf/con5eng.pdf>
- UNESCO. (1998). World declaration on higher education for the 21st century. Paris: UNESCO.

- UNESCO. (2000). *World education report. The right to education: Towards education for all throughout life*. Paris: UNESCO Publishing.
- UNESCO. (2002). UNESCO Universal declaration of cultural diversity: A vision, a conceptual platform, a pool of ideas for implementation, a new paradigm. Retrieved from <http://unesdoc.unesco.org/images/0012/001271/127162e.pdf>
- UNESCO. (2003). What is local knowledge? Retrieved from http://portal.unesco.org/science/en/ev.php-URL_ID=2034&URL_DO=DO_TOPIC&URL_SECTION=201.html
- UNESCO. (2009a). UNESCO world conference on higher education drew 4,200 participants by today's close. Retrieved from <http://www.unesco.org/bpi/eng/unescopress/98-223e.htm>
- UNESCO. (2009b). 2009 world conference on higher education: The new dynamics of higher education and research for societal change and development: Communiqué. Paris: UNESCO.
- UNESCO. (2012). ISCED: International standard classification of education. Retrieved from <http://www.uis.unesco.org/Education/Pages/international-standard-classification-of-education.aspx>
- UNESCO. (2013a). Human rights education. Education. Retrieved from <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/human-rights-education/>
- UNESCO. (2013b). Social and human sciences. Standard-setting instruments. Retrieved from <http://www.unesco.org/new/en/social-and-human-sciences/themes/gender-equality/legal-instruments/>
- UNESCO. (2014). Teaching and learning: Achieving quality for all. Education for all global monitoring report. Paris: UNESCO. Retrieved from <http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>
- UNGA. (1948a). Fate of minorities. Retrieved from <http://www.un-documents.net/a3r217c.htm>
- UNGA. (1948b). Universal declaration of human rights. Retrieved from <http://www.un.org/en/documents/udhr/>
- UNGA. (1966). International covenant on economic, social and cultural rights. Retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

- UNGA. (2014). Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Retrieved http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/2
- United Nations Commission on Human Rights. (1986). Study of the problem of discrimination against indigenous populations. 11 March 1986, E/CN.4/RES/1986/35. Retrieved from <http://www.refworld.org/docid/3b00f02630.html>
- United Nations Development Group. (2009). Guidelines on indigenous peoples' issues. Retrieved from http://www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf.
- United Nations General Assembly. (1948). Universal declaration of human rights. Retrieved from <http://www.un.org/en/documents/udhr/>
- United Nations General Assembly. (1966). International covenant on economic, social and cultural rights. Retrieved from <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>
- United Nations News Center. (2006). UN 'think tank' winds up by proposing expert body to advise Human Rights Council. Retrieved from <http://www.un.org/apps/news/story.asp?NewsID=19630&Cr=rights&Cr1=council>
- United Nations Office of Legal Affairs. (1999). United Nations treaty collection. In *Treaty reference guide*. New York: United Nations.
- United Nations Permanent Forum on Indigenous Issues. (2013). UNPFII. Retrieved from <http://undesadspd.org/IndigenousPeoples.aspx>.
- United Nations. (2013). *Vienna declaration and programme of action: 20 years working for your rights*. Retrieved from http://www.ohchr.org/Documents/Events/OHCHR20/VDPA_booklet_English.pdf
- United Nations. (2014a). Convention on the elimination of discrimination against women. Declarations, reservations and objections to CEDAW. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>
- United Nations. (2014b). History of the document. The universal declaration of human rights. Retrieved from <http://www.un.org/en/documents/udhr/history.shtml>
- United States Commission on International Religious Freedom. (2015). USCIRF annual report 2015: chapter on Iran. Retrieved from <http://www.uscirf.gov/sites/default/files/Iran%202015.pdf>

- Unterhalter, E., & Carpentier, V. (2010). *Global inequalities and higher education: Whose interests are we serving?* New York, NY: Palgrave Macmillan.
- van Dijk, T. A. (2001). Critical discourse analysis. In D. Tannen, D. Schiffrin, & H. Hamilton (Eds.), *Handbook of discourse analysis* (pp. 352-371). Oxford: Blackwell.
- van Dijk, T. A. (2013). Can CDS be learned? Discourse in society. Retrieved from <http://www.discourses.org/resources/teachyourself/Can%20CDS%20be%20learned.html>
- VanWynsberghe, R., & Moore, J. (2008). Envisioning the classroom as a social movement organization. *Policy Futures in Education*, 6(3), 298-311.
- Vegh, S. (2003). Classifying forms of online activism: The case of cyberprotests against the World Bank. In M. McCaughey and M. D. Ayers (Eds.), *Cyberactivism: Online activism in theory and practice* (71-96). New York, NY: Routledge.
- Verkuyten, M. (2006). The endorsement of minority rights: The role of group position, national context, and ideological beliefs. *Political Psychology*, 27(4), 527-548.
- Verschraegen, G. (2002). Human rights and modern society: A sociological analysis from the perspective of systems theory. *Journal of Law and Society*, 29(2), 258-281.
- Vizenor, G. R. (1994). *Manifest manners: Postindian warriors of survivance*. Hanover, NH: Wesleyan University Press.
- Vizenor, G. (1998). *Fugitive poses: Native American Indian scenes of absence and presence*. Lincoln, Nebraska: University of Nebraska Press.
- Vrasidas, C., Zembylas, M., & Glass, G. V. (Eds.). (2009). *ICT for education, development & social justice*. Charlotte: Information Age Publishing, Inc.
- Walia, H. (2015, January 21). 'Land is a relationship': In conversation with Glen Coulthard on indigenous nationhood. *Earth First! Newswire*. Retrieved from <http://earthfirstjournal.org/newswire/2015/01/21/land-is-a-relationship-in-conversation-with-glen-coulthard-on-indigenous-nationhood/#more-40347>
- Waltz, S. (2001). Universalizing human rights: The role of small states in the construction of the universal declaration of human rights. In J. Barreto (Ed.), *Human rights from a third world perspective: Critique, history and international law* (pp. 353-387). Newcastle, UK: Cambridge Scholars Publishing.
- Weber, R. P. (1990). *Basic content analysis*. Newbury Park, CA: Sage Publications.

- Weckert, J. (2005). Trust in cyberspace. In R.J. Cavalier (Ed.), *The Impact of the Internet on Our Moral Lives*. Albany: State University of New York Press, p. 95.
- Weis, L., & Fine, M. (2004). *Working method: Research and social justice*. New York, NY: Routledge.
- White, B., & Dixon, K. L. (2007). Minority institutions for higher education in partnership with federal agencies. Retrieved from <http://www.fhwa.dot.gov/civilrights/presentation/070807a/index.htm>
- WIPO. (2014). What is intellectual property? Retrieved from <http://www.wipo.int/about-ip/en/index.html#ip>
- Wodak, R. (2001). What is CDA about – a summary of its history, important concepts and its developments. In R. Wodak & M. Meyer (Eds.), *Methods of critical discourse analysis* (pp. 1–13). London: SAGE Publications, Inc.
- World Bank. (2002). *Constructing knowledge societies: New challenges for tertiary education*. Washington, DC: The World Bank.
- World Bank. (2003). Lifelong learning in the global knowledge economy: Challenges for developing countries. Washington, DC: The World Bank.
- World Bank. (2009). Literature review on equity and access to tertiary education in the Latin America and Caribbean region. Retrieved from http://siteresources.worldbank.org/EDUCATION/Resources/278200-1099079877269/547664-1099079956815/547670-1276537814548/WorldBank_LAC_Equity_LitReview.pdf
- World Wildlife Fund. (2015). Cerrado, the Brazilian savanna. Retrieved from http://wwf.panda.org/what_we_do/where_we_work/cerrado/
- Yanow, D. (2000). *Conducting interpretive policy analysis*. Thousand Oaks, CA: SAGE Publications, Inc.
- Yanow, D. (2014). Interpretive analysis and comparative research. In I. Engeli, & C. Rothmayr (Eds.), *Comparative policy studies: Conceptual and methodological challenges*. New York, NY: Palgrave Macmillan.
- Yeor, B. (2002). *Islam and dhimmitude: Civilizations collide*. Cranbury, New Jersey: Associated University Presses.
- Yin, R. K. (2003). *Case study research: Design and methods* (3rd ed.). Thousand Oaks: SAGE Publications, Inc.

- Yin, R. K. (2009). *Case study research: Design and methods*. Thousand Oaks: SAGE Publications, Inc.
- Yin, R. K. (2013). *Case study research: Design and methods* (5th ed.). Thousand Oaks: SAGE Publications, Inc.
- Zajda, J., Majhanovich, S., Rust, V., & Martín Sabina, E. (Eds.). (2006). *Education and social justice*. Dordrecht: Springer.
- Zald, M. N., & Ash Garner, R. (1990). Social movement organizations: Growth, decay and change. In M. N. Zald & J. D. McCarthy (Eds.) *Social movements in an organizational society: Collected essays* (121-142). New Brunswick: Transaction Publisher.